BETWEEN TWO WORLDS

Maori Values and Environmental Decision-making

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ABSTRACT

This study investigates the way in which Maori values are incorporated into environmental decision-making. Recently, the implementation of large resource developments have drawn protest from Maori communities and focussed attention on these values. The study examines the nature of these values, associated with the way the Maori people use and perceive the environment,and determines that these are still strongly held today. It then establishes that as an indigenous minority culture Maori values should be specifically considered. From this basis, environmental decision-making procedures are examined. The findings reveal that many procedures do not sufficiently account for Maori values. Two options are formulated to improve the existing situation. The first option looks at changes to present procedures. The second option investigates implementing reforms to encourage earlier participation with Maori communities.

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"Like a sharp midsummers sunrise reared from a high mountain the sweep of Maoritanga cuts across the land, illuminating a nation that until recently imagined itself to be influenced by just one culture, the English way of life, a way that had developed and endured for more than 1000 years... . Today, that culture, Maoritanga, the Maori way, in just a few years, even a few months, has asserted itself as an alternative way of life" (H.R.C. 1981: 7).

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CHAPTER ONE

INTRODUCTION

1.1 PROBLEM STATEMENT

The past decade has witnessed growing opposition by Maori groups and communities to the implementation of a number of large development projects such as the Huntly Power Station, the Motonui Synthetic Petrol Plant, and the New Zealand Steel Mill Expansion. The Maori people have protested that these projects conflict with their traditional attitudes and values to the environment - values which they claim are still extremely important. Their opposition prompts a number of questions: What are Maori environmental values? Why should these be considered? An do present decision-making procedures allow for their adequate consideration? The examination of these questions is the principal focus and forms the problem this study addresses. The development projects cited above provide exemplification of the questions raised.

The relevance of this study has been enhanced by current government moves. Recent policy statements and initiatives have given specific acknowledgement and recognition to Maori culture and the position of the Maori in New Zealand society. The new Ministry for the Environment, for instance, has the stated objective to take into account the principles embodied in the Treaty of Waitangi and has established a Maori Secretariat. In a further move, the Waitangi Amendment Act passed at the end of 1985, extends the powers of the Waitangi Tribunal. The Tribunal, established in 1975, is a recommendatory body to investigate grievances which Maori claimants maintain contravene the principles of the Treaty of Waitangi. The 1985 Act extends both the number on the Tribunal and expands its brief to investigate matters which date back to 1840 whereas previously it had been restricted to matters arising since 1975. The esteem in which this body is held was demonstrated by recent Government assurances to implement the recommendations of the Tribunal in its Manukau Harbour decision.

There have also been legal moves, as indicated in a recent High Court ruling, to acknowledge Maori fishing rights under the Treaty. In addition, the Maori Land Appeal Court, in an historic decision, upheld a principle of tribal rather than individual ownership of Maori land for the first time (The Star 6.10.86). Further movements have occurred to incorporate bicultural discussion in the areas of education and social welfare. Together, these initiatives accompany a greatly increased profile of Maoritanga in general.

1.2 OBJECTIVES

With greater recognition of Maori culture generally, the questions raised above in the problem statement, concerning the involvement of Maori values in environmental decision-making are pertinent ones. The objectives below follow essentially from the problem statement.

1) To analyse the nature of Maori values and the evidence for their existence today.
2) To establish why the values of the Maori, as a miniority cultural group, should be specifically considered.
3) To analyse environmental decision-making procedures to identify the factors which inhibit Maori values from being taken into account.
4) To formulate options by which these values can be given greater consideration in environmental decision-making.
5) To consider the implications of implementing the options above.

1.3 FORMAT

These objectives provide the basic structure for this study. The following chapter explores the nature of Maori values and the evidence for their existence today given that considerable change has occurred since the arrival of the European. Chapter three examines the reasons why the Maori, as a minority, merits specific consideration. Given that Maori values can be identified and are worthy of consideration, chapter four examines current decision-making procedures relevant to resource development and other environmental uses. This study has focussed on three specific components of these procedures considered most fundamental. These are the legislation, the

communication between Maori bodies and administrative authorities, and the Planning Tribunal. In light of the analysis in chapter four, two options are formulated in chapter five to improve the existing procedures. The first option involves making adjustments to existing decision-making procedures. The implications of adopting this type of policy option are discussed and the potential need recognised for the second option which involves more far-reaching changes outside the present decision-making framework.

CHAPTER 2

WHAT ARE MAORI VALUES?

The following analysis seeks to determine the nature of Maori values' in relation to the environment, and in particular, what is meant when these are spoken of today. This is an essential step because without establishing the present existence of Maori values there is no basis for considering them in decision-making procedures. The chapter is divided into four parts. The first investigates pre-European Maori perceptions and attitudes to the natural world about them. In this way, the discussion of values has a framework or reference point in which to place Maori values today. The predominant Pakeha attitude is then contrasted with that of the Maori in the second part. The third section examines the process of Pakeha colonisation. Through policies of integration/assimilation the Maori has become incorporated into Pakeha society and their traditional attitudes and perceptions modified. There is, therefore, no unified Maori view today but one ranging, from the more traditional to a perception that is characteristically European. Conflicts between Maori and Pakeha attitudes which have occurred with the implementation of resource development projects, however, provide a clear indication of values still strongly held which are compatible with a traditional perception. These conflicts are discussed in the final section of this chapter.

2.1 TRADITIONAL MAORI ATTITUDE TO THE ENVIRONMENT

2.1.1 Adaptation to a new environment

Estimates of the Maori arrival in Aotearoa fall approximately around the ninth century. They originated from the Eastern Polynesian group of islands whose present inhabitants exhibit similar traditions and language. Their arrival would have meant adjusting to an environment totally different to the one they had left. The existence of new flora, fauna, and above all climate, would have rendered many of their practices, founded on a tropical environment, inappropriate. In particular, the low temperatures would have greatly restricted the growth of traditional crops - cultivation of yams, the mulberry tree and kumara would have been limited. The early Maori, therefore, relied heavily on the hunting and gathering of animals, particularly birds, whose habits and, importantly, rates of natural increase were unknown.

Major environmental modifications which have been attributed to Maoris occurred predominantly in the early part of Maori occupation. The most notable impacts were the extinction of species of moa and other bird species, and the destruction of large areas of South Island forests. These modifications are evidence of an inappropriate response to the environment. To some degree they can be seen in the context of a group of people attempting to survive within an environment of which they have little knowledge, nor complete awareness of their actions. Survival would have been an essential motivation. As Anderson notes on the findings of archeological excavations in Palliser Bay in the Wairarapa, where the actions of the ancient inhabitants had disastrous results, "it would be invidious to draw the conclusion that the (Palliser Bay) inhabitants were ignorant of, or unsympathetic to, the need for shellfish conservation; it may well have been a luxury they could simply not afford" (in Leach: 64).

2.1.2 Mythology

Mythology governed the attitude and response of the Maori to their natural world. There seems little doubt that the mythology evolved as the Maori adapted more closely to their environment. There was room for considerable adaptability and flexibility because myths were transmitted orally. Hence, they could be modified to give relevance to a given set of circumstances or specific natural conditions. Myths determined the way in which the Maori operated within their environment, and successful adaptations influenced the nature and emphasis of the myths.

Myths performed a number of important functions. Through mythology the nature of the world and the place of human beings in it was explained. In addition, the figures in mythology provided role models which established patterns of behaviour - providing rewards for acceptable behaviour and punishments for the unacceptable. Mythology, through the recorded actions of ancestors, explained the natural world and provided a context into which the Maori could put themselves.

Creation Myths The creation myths provide an illustration of these points. In the first of these, Tane separates his father Ranginui and his mother Papa-tu-a-nuku, and releases his brothers from their embrace. Ranginui becomes the sky and Papa-tu-a-nuku the earth. The separation is significant not only because it explains the position of the sky and earth, but it also emphasises the distinction in Maori life between male and female. Rangi is the sky and hence tapu ;Papa the earth and mother, from whom all life originates, is noa, low and common. In this way, the myth provides a pattern or model for the actions of human beings.

Tane plays an important role in the creation myths. First he is the atua (mythical ancestor) of the forests and responsible for all life within them. In addition, Tane uses the sacred sail of Hawaiki to make the first woman. He then mates with her to create the first human beings. The Maori, therefore, is descended from Rangi and Papa through Tane. All other life is also descended from Rangi and Papa. The Maori are thus part of, and related, to the living world about them. Rather than being separated from their environment, with humans in one compartment and all other life in another, the Maori perceive themselves as an integral part of the environment.

O'Regan explains this relationship further. He points out that a Maori looking at a land or seascape, "if one is a Maori, one is looking at oneself. We are looking at Tangaroa and Tane, we are looking at the atua from whom we descend, at our own tupuna, we are looking at ourselves." He goes on to make the point: "I was challenged recently by a very earnest Christian who declared, 'surely nature is for all of us - we share it'. I replied, 'yes I am quite happy to share it but what I want you to recognise is that if we are sharing it, well and good, but it is we that are the descendants from it' " (O'Regan1984:14).

A possible contradiction could exist here. If the Maori is related to all living things, then killing them for food or for other purposes would be a highly tapu act. A subsequent myth which involves Tu (the atua of war and brother of Tane) solves the dilemma. The myth describes how Tu kills and eats fish, birds and other living things and by doing this makes them noa (common). Tu provides an example for human beings who follow to also make use of the living world, but because they are not atua, like Tu, they have to first remove the tapu by performing the correct rituals.

The descriptions of the ancestors in the creation myths provided a means by which to understand and perceive the environment. As O'Regan states:

> "Tane was a tree, also Tane was a person, likewise water was Tangaroa . . . they knew water was wet but they also knew it as Tangaroa. There was unity in their perceptions."
>
> (O'Regan1984: 8)

He goes on to parallel this with Catholic theology, where bread and wine are what they appear before being sanctified; yet afterwards they become the body and blood of Christ. In this way, he points out, water is still water, but it is also Tangaroa.

> "This does not mean that because my river represents an atua they should not be touched or used. One of the more endearing characteristics of Maori is their capacity to tie the practical together with their theological beliefs." (Ibid: 10)

Later myths tell of other ancestors, e.g., Maui,Tawhaki, and Karaki, and give further meaning to the world and provide additional role models. They are followed by ancestors who make the voyage from Hawaiki, the mythical land of origin, to Aotearoa. Gradually the names in the whakapapa become legendary rather than mythical until the realms of history are reached (Orbell 1985).

2.1.3 Links with the land

The latter group of myths, which describe arrival in Aotearoa, are important because they establish the whakapapa (lineage) of different tribes and the rights to land each occupies. These rights are further validated by stories which record the actions of later ancestors - the sites of battles, and notable events. Oral traditions tell of these happenings and often an act performed by an ancestor will be so significant that s(he) will become a distinct feature in the landscape. A rock or mountain will become known as that ancestor. Landmarks, therefore, not only denoted tribal areas but were visual confirmation of links with previous ancestors. The significance of this was that the Maori is surrounded by their ancestors. These took on a living form which was projected into their everyday lives. One story from the Ngati Ranginui, for example, tells of the arrival of the Mataatua Canoe when entering Tauranga Harbour. Here it went aground on a sandbar and was threatened by rising seas. An old woman Te Kuia jumped over board and laying beneath the canoe, formed a skid on which the canoe slid into the sheltered waters of the Harbour. The body of Te Kuia is now a rock which can be seen at the Harbour entrance and it is a customary mark of respect that when fishing nearby that an offering be made to her (Orbell 1985: 40).

Links with the land were made more sacred by the burial of a child's pito (umbilical cord) with the accompanying ritual of iho-whenua (connection with the land). For children of rank, it was customary to plant a tree over the spot. Thereafter the tree was named for the child as his iho-whenua and stood as an expression of belonging to the land (Walker 1981: 69). The connection to the landscape was also emphasised with regard to the link between the people and the area they occupied. The Taupo people's motto (pipeha) links the lake, volcanic mountain, and chief in the saying "Tongariro is the mountain, Taupo is the lake and Te Hauheu the chief". The attachment to the land is so great that Firth remarks that it almost seems "doubtful whether it is the tribe who owns the mountain or the mountain who owns the tribe" (Firth 1972: 373).

2.1.4 Mauri (life principle)

As all living things are descended from common ancestors, so all elements of the natural world possessed life and some form of living spirit. Every natural object possessed a spiritual essence, a non-material core or life principle - a mauri. The preservation of mauri was all important. Without it an object must inevitably die and decay. Because in everyday life, use was made of the environment there was the constant risk of limiting or affecting the mauri. The danger of pollution or loss of fertility in the forest, was a grave risk. To guard against this, a set of rules governing conduct and behaviour was implicit. The concept of mauri was used to classify different types of water which then dictated the way they were to be used (see appendix 2).

The preservation of mauri was closely associated with the practices of tapu. The prohibition of certain practices and the sacredness of certain places ensured their protection and hence their mauri. For example, it was tapu to leave the feathers of snared birds in the forest because other birds would sense danger and leave the area. Similarly, the cleaning of fish in the sea constituted not only physical pollution but spiritual pollution. A specific form of tapu could be imposed by someone of high ranking or mana. Known as a rahui, it consisted of a sign or a mark which restricted access to an area or resource. Violation of the rahui was likely to bring death or misfortune. (See Best 1904, Mead) The development of these concepts and practices had a sound pragmatic logic that can be appreciated in the contemporary era of environmental awareness and management. There is much validity in Walker's comment that "magic is the bastard brother of science."

Firth notes that the belief in the mauri of natural resources and their protection in this manner exerted a real influence over economic affairs. First, it fostered an atmosphere of respect and also fear obviating deliberate or negligent destruction of essential resources. Also, through the ritualised prohibitions, the conduct of people was regulated towards their natural environment " . . . its importance was kept before them and their whole psychological attitude stabilised, handed down to them already moulded by tradition" (Firth 1972: 263). It once again reinforced ideas already in place through the mythology in a practical way.

From their intimate relationship with the environment, the Maori developed a profound knowledge of fellow lifeforms. This was reflected in their language where enormous numbers of plants and animals were named. Moreover, their thinking was subtle and analytical . . .

> the Maori "displayed considerable accuracy of observation, enabling him to discover certain of the less obvious of natural phenomena and also to elucidate the affinities of a number of animals and plants" (Firth 1973: 59).

Colenso, an early missionary and botanist, remarked that the Maori had perceived affinities of some species of plants which are botanically allied, but superficially dissimilar and had given expression to this by assigning to them parallel names (Firth: 60).

Because they saw themselves being related to their environment with the natural world their kin, their observations reflected an emotional relationship. As Orbell notes:

> "the Maori were free to project human presences and values on the world. Thought and feeling were one. Their poets drew confidently upon a rich store of shared imagery and ideas; and while there was a term for 'ritual', karakia, no words were needed to distinguish 'science' from 'religion'." (1985: 217).

Parallels from the living world were naturally drawn into everyday language. This "identification with nature was woven into figures of speech on the marae when the death of a chief was likened to the 'fall of the shelter giving totara'. The perception of giants of the forest as symbols for men of rank enhanced respect for nature" (R. Walker 1981: 69).

2.1.5 Limits of technology

Maori behaviour toward the environment was restricted by the technology available to them. This set limits to the degree of modification able to be effected and the means by which they produced their material requirements. Production over and above any material need was highly institutionalised and represented a great cost in labour. This is not to say surpluses were not produced. Indeed they were a most important part of Maori economic and social life, but they did not go towards supporting large numbers of dependent and unproductive groups within society. Furthermore, any surplus produced was generally perishable, unable to be transformed into accumulated capital (Worsley 1984: 67). Thus, once basic needs were met, a different set of priorities came into play. Surpluses were converted into mana through conspicuous displays and

feasts in which neighbouring whanau or hapu were invited to share. Such contests augmented the mana of the chiefs who organised them and the kinsfolk they mobilised and the only way to outshine them was to stage an even more ambitious feast later. Therefore, a chief was more or less obliged to ensure redistribution amongst his followers or dependents. Distributing wealth in such a way built loyalty and a 'moral credit' which would be cashed in later for other services, often military (ibid: 68).

Over time the Maori developed a greater awareness of their actions within the environment which resulted in the evolution of more diverse responses, often guided by mythology, and hence a more appropriate relationship. The story of Rata, for example, emphasises the need to observe the correct rituals. It tells of Rata who cut down a tree for a canoe several times, each time without performing the correct rites and each time he found, in the morning, the tree standing again. Finally he did heed the correct rituals, and when he arose the following morning a canoe was there already made for him. The story explains the importance of following the correct rituals and in so doing adopting a pattern of behaviour which lessens the possibility of careless destruction.

Given their available technology, Maori society had adapted to the environment in such a way that survival was guaranteed. The evolution of the subsequent social structure was legitimised by a prevailing mythology which placed their life into some form of context. This mythology had not evolved in isolation, nor was it divorced and different from the life of the Maori - it instead perpetuated a lifestyle that was relevant to the environment. Maori life was, therefore, a reflection of the mythology and vice versa.

The Maori perceived themselves as part of the environment related to the life forms that surrounded them. Thus their attitude to nature was not one of utility - a resource for the benefit of humankind (although there is no mistaking the environment was there for their use), but rather an acceptance of the living world as existing in its own right for its own sake.

In the words of Orbell:

> Maori thought and mythology were centrally concerned with the human situation and human experience, as all systems of thought have necessarily been, but in their thought, as in their way of life, a balance was maintained between human beings and the environment. Their closeness to nature and the immediacy of their dependence upon it, their intimate and profound knowledge of plants, animals and landscape, led to a view of the world which recognised the tapu, the sacredness, of other life forms and the landscape itself. By seeing themselves in the natural world and thus personifying all aspects of the environment, they acquired a fellow-feeling for the life forms and other entities that surrounded them, and they saw a kinship between all things." (1985: 216-217).

2.2 EUROPEAN ATTITUDE TO NATURE

In contrast to the Maori, the European attitude to the environment was derived from very different origins. A large literature concerns itself with Western perceptions of the environment; it is not the intention to discuss this at length here, but merely to point out the differences. The historical roots of a Western perception are located in what Lynn White (1967) calls the Judaeo and Christian doctrine of creation, and lie in the belief that "man was made in God's image and shares in God's transcendence of nature, and that the whole natural order was created for the sake of humanity." (Athfield 1983:20-21). The implication of such a belief, says Athfield, was that " in place of the respect for the guardian spirits of groves, streams and hills afforded by pagan animism, 'Christianity made it possible to exploit nature in a mood of indifference to the feelings of natural objects' " (ibid:23).

Although it is difficult to substantiate whether a Judaeo-Christian derived attitude necessarily implies a belief in a more exploitative attitude to nature, as White maintains (for instance Glacken 1967 argues the Judaeo-Christian legacy can be argued in exactly the reverse way) it nevertheless has other implications for the way the Western mind perceives the environment. Most importantly, it establishes the hierarchy of God, humankind and the environment and authorises humans to be responsible for nature. Whether that responsibility is to be exercised in a despotic manner or a manner more in the line of stewardship, is again debatable (see Black 1970, Passmore 1974). However, it does exhibit the belief in the duality of humankind and nature as separate entities. The work of Bacon and Descartes during the 16th and 17th centuries in the development of classical science puts the belief in duality into more practical effect.

Descartes focussed on the way in which humans were distinguishable from the rest of nature. He deduced that what separated humans from other living things was the thought process. Whereas the body could be reduced or analysed into its component parts, the mind could not. Descartes thereby introduced a most fundamental dualism in modern thought-that between mind and matter. Cartesian dualism, as Descartes' work became known, involved mind and matter, and had a profound implication for the human-nature relationship because nature became composed of objects metaphysically separated from humankind (Pepper 1984). The separation enabled explanations of nature by universal principles which applied only to matter. These principles, because they were separate from human existence could, therefore, be tested.

Bacon's method, while different from that of Descartes (being inductive rather than deductive) shared the same view of the separateness of humans from nature. Moreover, Bacon claimed that science was both progressive and a philanthropic activity. It first built on a secure basis of facts, advancing them towards greater truth. Second, this steady advance would be the way to obtain a progressive improvement in the material circumstances of humanity (ibid:1984). Scientific method, and scientific rationality was to be given greater validity than that which was non-scientific. Scientific explanations replaced explanations which had previously been based on mythology or religious beliefs. The role of religion as an explanation of natural events was increasingly usurped, and the division between scence and religion became more pronounced. Thus the European looks to science to predict the consequences of using the environment rather than to religious explanations. But while science can possibly predict the outcome of different actions, the decision of whether or not to proceed with a particular option is a moral one for humans and not determined by a religious precept. This separation constitutes a fundamental difference between Maori and Pakeha attitudes.

The prevailing Western attitude towards nature, unlike the Maori, is fundamentally anthropocentric. Because of the mind-matter separation, science constructs universal truths, which explain how the environment functions and are able to be tested. Scientific activity and the formulation of truths and laws is seen as a progressive and positive step in human development. Moreover, because of the distinction between humans and their environment, the environment is understood to be in existence for the sake of humans. It is therefore a resource-whether it be for consumption or to be enjoyed for its aesthetic beauty-and the fundamental attitude is that of utility.

2.3 COLONISING ATTITUDES

Many of the early Europeans (pre 1840) recognised the existence and coherence of Maori values and custom. Indeed, James Stephens who appeared to be responsible for official British policy on the subject instructed Governor Hobson in 1840:

> "(The Maori people) have established by their own customs a division and appropriation of the soil... with useages having the character and authority of law... it will of course be the duty of the protectors to make themselves conversant with the native customs, and to supply the Government all such information."
>
> (in Frame 1981:105-6)

The New Zealand Constitution Act drawn up in 1846, gave some recognition to the continuation of Maori custom which would also apply to Pakehas within certain areas. However, by 1852 when it was finally brought into effect, it was more limited. Furthermore, section 71- "provision as to Maori laws and customs", which advocated the establishment of districts under Maori jurisdiction, was never used.

These early examples illustrate the attempts by the Pakeha to come to terms with Maori customs and values and provide some means of bringing these together with their own institutions. What is most notable, however, is how over a period of 40 years after the signing of the Treaty of Waitangi in 1840, the recognition of Maori values diminish. By the 1850s the settler Government was re-evaluating its position. Richmond in a speech to the General Assembly perceived three possible choices available to the government of the day. First, to maintain Maori custom as it had been recognised previously. Second, to supercede Maori custom with British law, without reference to the opinions of the Maori. Both options were considered either unpalatable, or

unworkable. Richmond's third option was "to insinuate or induce the acceptance of British law..." amongst the Maori. It was this last course which was actively followed (Frame 1981).

Other important changes were occuring during this period, one of the most significant being land commodification. The Native Lands Act 1862 and the Maori Land Court 1865 was "devoted chiefly to the purpose of ascertaining the Maori customary title and transforming it into freehold title" (Haughey 1976). The individualisation of land was a concept foreign to the Maori to whom rights were invested in the social structure and not the land itself. Misunderstandings arose when the Pakeha attempted to buy land. Many Maori interpreted payment for land as a lease or gift rather than purchase. Moreover, often the Maori who did agree to sale lacked the authoritative capacity on behalf of the tribe. When combined with the insistent Pakeha demand for land, such confusion resulted in hostility, the first outbreak occuring in Taranaki in 1859. Furthermore, realising that their land was likely to be eroded by land sales, the Waikato confederation of tribes combined under the first Maori King Te Wherowhero. The resistance on the part of the King Movement or, Kohitanga, provoked a military response on the part of Pakeha which resulted in the Land Wars.

By 1877, after the Land Wars, a new perspective to Maori customs and values emerged. This was simply to deny Maori custom existed at all. Chief Justice Prendergast in the case Wi Parata v the Bishop of Wellington 1877, stated:

> "Had any body of law or custom capable of being understood and administered by the Courts of a civilised country been known to exist, the British Government would surely have provided for its recognition...".

This conclusion marked the end point of an evolution of Pakeha thought which had witnessed some acceptance of Maori customs in the 1840s to its total rejection in law some 37 years later. The period was one of great change in New Zealand. The European population had risen from being a tiny minority in a Polynesian land, to where they held a majority. And then had demonstrated their authority by defeating the Maoris in the Land Wars. Colonial law from 1877 onwards was all embracing and did not allow for operation of Maori customary law outside its jurisdiction.

Furthermore, it did not expressly acknowledge or provide for Maori values and customs within its statutes. Ludbrook states: "We tend to assume our law has some universal quality that transcends national and cultural boundaries... . We are inclined to forget when we speak of the law we are talking about pakeha law-a body of laws which derived from the custom and usage of Great Britain, developed in the British social and political climate and transplanted in New Zealand... ". The evolution of settler law in New Zealand can be seen as a reflection of a prevalent Pakeha attitudes.

The predominant attitude was one of integration and assimilation, although in the 19th century there is no doubt on whose terms this was to be achieved. The Land Wars and the Native Land Act in this context were instruments to bring about this policy. New Zealand's first Attorney-General wrote in 1853:

> "It shall be given to the founders of this colony to be also the instruments of preserving a barbarous native race, and of raising them in the scale of civilisation to a level with ourselves." (in Ludbrook)

The comment echoed the desire expressed earlier by the missionary, Wakefield, to lead "a savage people to embrace the religion, language, laws and social habits of an advanced country" (in Pawson 1986:8). Records from the 19th century are replete with similar sentiments (Ward 1978).

Throughout the 20th century the underlying policy of integration has remained. As late as 1960 the Hunn Report, which formed the basis of Maori Affairs policy, "reiterated the promotion of 'integration' in order to bring the Maoris into the modern world." (ibid 1986:35). The Listener in 1973 stated in an editorial that to "suggest that there exists a 'Maori' culture in which some New Zealanders could find a life pattern sufficient to sustain a sense of identity, distinct from 'European' culture is just as fallacious as saying the Scots, Dutch and others could isolate themselves in the culture of their particular tribal backgrounds. We New Zealanders are one people together on a common voyage to an irresistable future." (Cross 1973 quoted in Pawson, 35)

Integration or assimilation has historically been the racial policy in New Zealand. As indicated, however, it has basically amounted to a rejection of Maori values in favour of European ones. This is illustrated most clearly in the legal arena. Maori customary law has been replaced by colonial or settler law. Within settler law, little or no recognition, with the exception of some recent Acts (e.g., the 1983 Fisheries Act) has been given to traditional Maori attitudes to the environment.

Yet despite 200 years of culture contact with Europeans, and an active policy of integration, a distinctive Maori culture has survived. A group consisting of about 10% of the NZ population still identify themselves as Maori, in the 1981 census. This group, notes Stokes, "refuse to be assimilated into some vague, amorphous cultural amalgam called New Zealand culture " (1979:1). This does not mean, however, that there is one cohesive set of attitudes amongst this group. Pat Hohepa comments:

> "To speak of the Maori people is of course to simplify issues greatly, because that sector has many faces and attitudes. There is a majority of under twenties, mainly urbanised, and with little knowledge of Maori. There are rural belts where there is a measure of autonomy of Maori tribal groups and where traditional and cultural practices have been continuous since original ancestors of the group peopled the area. There are rural belts where migration from other areas has been relatively recent and post-European. Then there are areas in or near cities where the voices of the young and dislocated are often heard, and these contrast vividly with entrenched communities virtually untouched by the rumblings of discontent. And if there is discontent in the entrenched and solid Maori communities the voices rarely reach the outside world but echo forlornly around the near-empty maraes. There are persons of Maori descent who are Pakeha in all but appearance and there are persons who are more European in appearance than Maori but are Maori culturally. (Stokes 1979: 1)

Maori culture today is obviously different from that which existed before the arrival of Europeans. Culture can never be considered a static phenomenon; it is dynamic and subject to constant change. The Maori people have undergone different degrees of incorporation into a European system. Thus while a more or less cohesive picture of pre-European Maori life can be built up which provides some means of establishing what a Maori attitude to the environment was essentially like, today a much greater diversity of views exists. A legitimate question is how relevant are the mythical and spiritual values which classify the traditional Maori view of the environment to the Maori today?

An examination of recent development projects, show clearly that traditional values are still strongly held. Conflicts over the way in which the environment is used indicate a clash of values between those of the Maori and of the Pakeha developer. These have been made particularly evident through the hearings of the Waitangi Tribunal. Here for the first time a forum has been established with the expressed brief of considering Maori grievances. The claims brought before it illustrate a perception that is rooted in a traditional Maori view of the environment. The following examples are evidence of this.

2.4 CONFLICTS OF PERCEPTION

These conflicts have gathered most attention with the implementation of large development projects. Many of these were instigated under the National Government policy of "Think Big" which aimed to utilise the natural resources of New Zealand in order to reduce the reliance on overseas imports. There have, however, been other areas of conflict associated with more local projects which have raised the ire of many Maori. Three examples are focussed on here to illustrate the current values held by many Maori today.

The first example is the claim made by the Ngati Pikiao, a sub-tribe of Te Arawa, to the Waitangi Tribunal. These people objected to a proposed sewerage outfall that was to pipe treated effluent from Rotorua City's sewerage system and discharge it into the Kaituna River. The intention of the scheme was to reduce the quantity of nutrients entering Lake Rotorua. The claimants maintained that the Kaituna River was of great significance to the Te Arawa people as a whole, particularly where it met the sea at the Maketu Estuary. It was here that the Te Arawa canoe first landed on its arrival in Aotearoa. Furthermore, the estuary and a surrounding coastal strip of about 50km in length was the only piece of coastline where kaimoana (food from the sea) was collected.

The claimants asserted that "to mix waters that had been contaminated by human waste with waters that were used for gathering food was deeply objectionable on Maori spiritual grounds... ." Maori custom ... requires water used for the preparation of food to be kept strictly separate from any kind of other purposes" (Waitangi Tribunal 1984:11-12). If the pipeline was to go ahead elders of the Ngati Pikiao tribe made it clear that a tapu would need to be declared over the area and this would constitute " a grave loss of tribal mana " (ibid:12). Other submissions to the Tribunal stressed the ancestral links with the Kaituna River area and demonstrated the deep-seated spiritual attachment to the region. An elder warned on television of the possibility of violent resistance if their concerns were ignored (29 October 1986).

The claim made to the Waitangi Tribunal by the Te Ati Awa Tribe in relation to the fishing grounds in the Waitara District (Taranaki) illustrates further the feelings of the Maori people to despoilation of traditional areas. This case centred on the fishing reefs of the north Taranaki bight. "Collectively they constitute one of the most extensive traditional fishing reefs of the Maori people. They are referred to in the songs and legends of the Te Ati Awa people and were a source, not only of food, but of tribal pride and prestige." (Waitangi Tribunal 1981:9). The Tribunal goes on to say:

> "Kaimoana has an intrinsic cultural value manifested in manaaki (token of esteem) for manuhiri (visitors)." The attitude was expressed in a submission to the tribunal ... mataitai (seafood) is very valuable, more valuable than meat-without that our table is nothing..."
>
> (in ibid)

Particular cultural practices and preferences govern the Te Ati Awa stewardship of their reef and river resources. The Tribunal found that the discharge of sewerage and industrial wastes violated the cultural significance of the reefs and that they were likely to be further deleteriously affected by the outfall from the Synthetic Petrol Plant.

In another example a case was brought against the NZ Steel Company for the expansion of its mill south of the Manukau Harbour. Water for the project was to be pumped from the Waikato, used and treated at the mill, and discharged into the Manukau Harbour. The Maori objection was based on the cultural and spiritual relationship of the Tainui people with the Waikato River and Manukau Harbour. The Tainui Trust Board submission to the Waitangi Tribunal stated:

> According to the spiritual beliefs of the Maaori, the Waikato River has its own "mauri" (life force). The wellbeing of all living things in the River and its environs is dependent on the "mauri" of the river. Similarly the Manukau Harbour has its own "mauri" which is the source of life-giving good for marine creatures that reside there and tribes living on its shoreline. The spiritual essences of the Waikato and the Manukau provide the abode for their respective taniwha (guardians). Because the Waikato is Wai Maaori (freshwater) and the Manukau is Wai Mata tai (saltwater), it is inimical to the spiritual beliefs of the Maaori to mix water from the Waikato with the waters of the Manukau. This mixing gives offence to their respective taniwha.

Not all Maori - Pakeha conflicts have been associated with large projects. Many are local and small in scale. An example of such a reaction is reflected in a letter sent by the Raukawa Development Trust to the Waipa County Council in Te Awamutu. It protested against the construction of a water reservoir by the local Council on a site sacred to the Ngati Raukawa. This very erudite protest is included in appendix 3.

It is evident, therefore, that despite the wide spectrum of attitudes held by Maoris today, a great number still hold the elements of their traditional cultural heritage in common. Furthermore, these form not only an important part of the way in which they view the world but constitute a unifying basis of Maori culture itself. Because these values to date have not been appreciated, or have fallen outside the realm of understanding of the predominant Pakeha perception, they have tended to have been overlooked. Moreover, the prevailing attitude of early colonisers in New Zealand, as it was throughout other parts of the world, was one of superiority. Their expressed intention was to elevate the "inferior" values and customs of the Maori to the "heights" of the European. The continuance of the belief that "we are one people" nurtured these policies of integration, and has resulted in the dominant Pakeha view of the world being accepted as the only one. It is only recently when Maori values have come into conflict with those of the Pakeha, frequently through the forum of the Waitangi Tribunal, has there been a realisation that different values exist, and are strongly and genuinely held.

This chapter has established, therefore, that despite 200 years of contact with Europeans, values uniquely Maori are still held. It has attempted to indicate by the use of examples their nature and existence. While it would be impossible to state all of these values here, given also that values vary between different tribes, it is easy to establish that they have derived from a particular perception of the world-and that this conflicts with a European perception. The next step is to investigate why these values should be recognised in decisions concerning resource development and environmental use.

Chapter 3

Why consider Maori Values?

The identification of strongly held customs and values in the previous chapter raises the next question of why these merit specific consideration. It is important to justify why Maori values, as opposed to those of other minority groups, should be specifically considered before any attempt can be made to incorporate these more adequately into environmental decision-making. Following a general discussion on the need to respect the rights and values of minorities, two aspects which relate to the Maori situation are investigated: first, their position as the tangata whenua or original inhabitants of New Zealand; and second the significance of the Treaty of Waitangi.

On a general level, society is based on respect for the values of minority groups. This principle is a recognised pre-requisite for a fair and equitable society. Moreover, the principle is a fundamental because society is ostensibly a composite of minority groups, whether they be cultural, religious or whatever. There is, therefore, an inherent element of reciprocity - one respects another's values in order that they in turn respect one's own. The Maori is a minority cultural group within New Zealand. Despite the difficulty ascertaining the boundaries of such a group, given the policies of assimilation and that most Maori are no longer full-blooded, there remains a sector of the population who identify themselves as Maori as opposed to any other cultural group. Society, therefore, in accordance with the principle above, should respect the values held by them.

To respect the values of others for the most part involves little or no cost. For example, Jews as a minority have the freedom to worship and structure their lives according to their values and this does not infringe upon the values of others. Nor are these values ascendent above those of another minority group or interest. There is, however, a distinction with the consideration of Maori values. These are often elevated to a position of greater significance, to be taken into specific account. Moreover, their inclusion into the decision-making process may involve costs to be borne by others in society. The following section establishes the basis on which the Maori has to be specifically considered.

3.1 TANGATA WHENUA

The Maori are the tangata whenua (original inhabitants) of New Zealand. As such, they have added claim that their values be given specific recognition. Three reasons are advanced in support of this statement. First, the Pakeha who came later, has traditionally ascribed some importance to the right of discovery and previous occupation. This has, however, been commonly applied only to those who conform to a European concept of statehood. Nevertheless, it would be argued that Maori in principle, despite the tribal nature of their occupancy, possessed the attributes of both discoverers and occupiers. Therefore, on the grounds that the European colonisers should apply their policy consistently, the Maori have additional standing as original inhabitants under European tradition.

Second, the Maori had no choice concerning the arrival of the Pakeha. Colonisation occurred, and would have occurred, regardless of whether the Maori wanted it to. Unlike other minority cultures who have since migrated to New Zealand, and who have chosen to come, the Maori lacked this option. Moreover, the Maoris had, as indicated in the previous chapter, an intimate relationship with the landscape. This attachment had special social and cultural significance particularly within their tribal area and precluded any option of migration elsewhere. For this reason they deserve special regard.

Third, the values and customs which make the Maori culture distinctive are found only in New Zealand. If these are lost there is no other place where they can be rejuvenated and they will, therefore, die. The Maori in this respect, join with others (e.g., the Inuits of Canada, Aborigines of Australia) who are commonly termed the fourth world - indigenous inhabitants of nations who live within the laws and institutions of another culture (Dyke 1985). This does not mean, however, that the Maori culture should be preserved as it was 200 years ago. Culture is a dynamic concept and constantly changing. There are aspects of it, however, as shown in chapter three, that remain strongly held. It is the Maori who must decide what in their culture is important and to be preserved. In light of these arguments it therefore behoves the majority culture, who occupy the position of power, the responsibility to ensure that the values and customs recognised by the Maori people are respected and preserved.

3.2 TREATY OF WAITANGI

The Treaty of Waitangi when signed in 1840 by chiefs of many North Island tribes and representatives of the Crown, acknowledged the position of the Maori as the tangata whenua (original inhabitants). This recognition by the European colonisers gives historical support to the three arguments above. The Treaty, however, has long been a focus for debate. Sir James Carroll speaking of the Treaty noted:

> So complete has the confusion both in law and practice become that lawyers of high standing and extensive practice have testified on oath that if the legislature had desired to create a state of confusion and anarchy in native land titles, it could not have hoped to be more successful than it has been. Were it not that the facts are vouched upon the testimony of men whose character is above suspicion and whose knowledge is undoubted, it would be well-nigh impossible to believe that such a state of disorder could exist.
>
> (in Haughey 1976)

Despite the confusion, the Treaty is still regarded as a critical document. The Waitangi Tribunal 1985 stated that it "obliges the Crown not only to recognise Maori interests but actively protect them". For this reason, it is worthy of comment here. The following discussion examines first the content of the Treaty, second its validity as a binding document, and third, what it means today.

Confusion is apparent between the English and Maori translations. One Maori version (the one that was actually signed) and five English versions of the Treaty exist. The first of the three articles, for instance, ceded 'sovereignty' to the Crown, a concept most closely matched by that of 'mana'. But the Maori text uses 'kawanatanga', a word created by missionaries for governership, and fitting more readily with the flexibility inherent in 'ariki', or leadership (Pawson 1986: 11). Had the chiefs believed they were ceding their mana it would have been highly unlikely they would have signed.

In Article II, the Crown confirmed and guaranteed to the Maori signatories the full exclusive and undisturbed possession of their lands and estates, forests, fisheries and other properties. Mr Williams, who was responsible for preparing the Maori version, translated the guarantee as one of "... te tino Rangatiratanga". He went on to specify the land (ratou whenua), the estates (ratou kainga) and included the English references to "forests fisheries and other properties" in the phrase "ratou taonga katoa" (all things highly prized) (Waitangi Tribunal 1984).

By including the phrase ratou taonga katoa, the Maori version goes further than the English. In the 1986 Te Reo Maori claim to the Waitangi Tribunal, the Maori language was established on this basis as something 'highly prized'. Frame (1981) also notes the expression 'ratou taonga katoa' might be regarded as extending beyond physical property and encompassing culture generally, including customary law. Thus Maori values would also be relevant under Article II - these, like the Maori language, would constitute a "taonga".

Moreover, the word "guarantee" in Article II of the English text was emphasised in a submission by the International Commission of Jurists to the 1986 Te Reo Waitangi Tribunal case. This stated:

> the word (guarantee) means more than merely leaving the Maori people unhindered in their enjoyment of their language and culture. It requires active steps to be taken to ensure that the Maori people have and retain the full exclusive and undisturbed possession of their language and culture . . . 'The situation could be different if the Treaty merely required the Crown to permit to the Maori people the full exclusive and undisturbed possession of the Taonga. Having so permitted, it could be argued that a policy of benign neglect amounted to compliance." However it adds, 'The word guarantee imposes an obligation to take active steps within the power of the guarantor, if it appears that the Maori people do not have or are losing, the full, exclusive and undisturbed possession of the Taonga . .'
>
> (in Waitangi Tribunal Findings 1986)

The Treaty of Waitangi, therefore, guarantees (in an active sense) the full exclusive and undisturbed possession of taonga - which can be construed to include Maori environmental values.

Since its signing, however, the Treaty has been rejected as a binding document in law. In Wi Parata v the Bishop of Wellingon etc. 1877, Judge Prendergast the Chief Justice noted "that so far as it . . . purported to cede sovereignty . . . it must be regarded as a simple nullity". In 1941 the Privy Council in the case of Hoani Te Heu Heu v Aotea District Maori Land Board further described the position of the Treaty in law. It stated:

> It is well settled that any rights purporting to be conferred by such a treaty of concession cannot be enforced in the Courts, except insofar as they been incorporated into the municipal law. . .
>
> (in Waitangi Tribunal 1984: 20).

The main reason cited for not recognising the Treaty has been the question of its validity in international law. In that context, it can be deemed valid only on the basis that the Maori signatories were possessed of the characteristics essential for legal personality. "This requires: first a permanent population, next a defined territory, third a government to which the mass of the people render habitual obedience, and, finally independence" (Molloy 1971:2).

Quite obviously, these stipulations reflect a European attitude and concept of the state. It was the third characteristic on which Prendergast delivered his judgement of the Court in 1877. He stated:

> "On the foundation of this colony, the aborigines were found without any kind of civil government, or any settled system of law. There is no doubt that during a series of years the British Government desired and endeavoured to recognise the independent nationality of New Zealand. But the thing neither existed nor at that time could be established. The Maori Tribes were incapable of performing the duties, and therefore of assuming the rights of a civilized community."
> (in Molloy 1971: 2)

Recent research, however, has indicated that the Treaty does have legal standing. McHugh (1984) claimed the decision made by Prendergast to be wrong because it was based on a concept of international law and not on established principles of colonial law. The colonial policy of the British Crown, he maintained, is demonstrated as far back as 1609 and was recognised in a number of subsequent decisions by the Privy Council, and in various West African settlements where treaties were concluded. In these, the policy included "punctilious recognition of the rights of indigenous peoples wherever the British flag was raised" (in Waitangi Tribunal 1984: 23).

Furthermore, a recent ruling by the International Court of Justice would seem to validate the status of the Treaty even under international law. In its Western Sahara opinion in 1975, the International Court of Justice recognised that even nomadic tribes were possessed of certain rights over their migratory routes. If nomadic tribes could exercise territorial rights, it would seem that the more territorially based Maori would possess rights pursuant to the promises exchanged in the Treaty (P. Joseph pers. comm 22.9.86).

In conclusion, the Treaty of Waitangi when signed, acknowledged the Maori position as original inhabitants, and guaranteed to protect their 'taonga' or treasures. Taonga has been interpreted broadly and can therefore be construed to apply also to Maori values. Although the Treaty was dismissed as a binding legal document in the nineteenth century, the evidence on which the dismissal was based has of late been seriously questioned and the validity of the Treaty upheld. Consequently, its present status is that it still represents an agreement on the part of the Crown to protect Maori interests.

Most importantly, as further validation to the argument above, the status of the Treaty has been recognised and held in sufficient regard for it to be enshrined into recent legislation. In 1975 the Treaty of Waitangi Act established the Waitangi Tribunal. The purpose of the Tribunal is to investigate concerns which the Maori claimants to it felt were "inconsistent with the principles of the Treaty" (section 6(1) Treaty of Waitangi Act 1975). Furthermore, the 1983 the Fisheries Act (Section 88(2)) expressly protects Maori fishing rights that are guaranteed in Article II of the Treaty. And in December of 1985 the Treaty of Waitangi Amendment Act expanded the size and extended the brief of The Waitangi Tribunal to cover issues dating back to 1840. Although its powers remain ones of recommendation and not enforcement, it is clear that the move to establish such a body indicates continued acknowledgement of the Treaty of Waitangi as an agreement to respect the traditional values of the Maori people.

The Treaty today, therefore, remains an acknowledged commitment to protect the cultural interests of the Maori. The Waitangi Tribunal in 1986 stated that "because of the Treaty, Maori New Zealanders stand on a special footing reinforcing, if reinforcements be needed, their historical position as the original inhabitants, the tangata whenua of New Zealand" (1986: 34). Recognition of the Treaty in statute is a recent occurence, and attempts to reconcile what it guarantees, and the extent to which this guarantee is absolute, in the context of today is still evolving. One of the most significant features of the Treaty is that it has become a focal point in the recent resurgence of Maori culture. It has been identified as a symbol which guarantees the Maori recognition and protection of their culture. Given the present volatility of debate, the precise status and degree to which the Treaty will be applied in the future is difficult to forecast.

The Maori, therefore, holds a special position as a minority as compared to other minorities in New Zealand. Because of their position as original inhabitants, their culture, customs and values, which determine their relationship with the environment, are found solely in New Zealand. Moreover, their position was acknowledged and their customs and values guaranteed protection under the Treaty of Waitangi. The Treaty has been shown to still be a valid document and is being increasingly recognised as such. For these reasons then, the Maori has a right for their values to be specifically considered in environmental decision-making.

CHAPTER 4

CONSIDERATION OF MAORI VALUES IN DECISION-MAKING

The previous chapter established the case for specifically considering Maori values. Chapter two outlined Maori cultural values within the context of the traditional way in which the Maori understood and used the natural world. Conflicts that have arisen from recent development projects have served to illustrate two things. First, that Maori values, consistent with a traditional perspective, are still in evidence today. Second, the existence of conflicts from resource development projects indicates that these values have not been taken into account to the satisfaction of their adherents. The next step, which is the objective of this chapter, is to investigate the present environmental decision-making procedures and identify the obstacles which inhibit the consideration of Maori values and, therefore, prevent resolution to these conflicts.

Decision-making, is concerned with making choices between competing uses of the environment. These can be made on a number of different institutional levels from a governmental level, such as is illustrated by the present transformation of environmental administration, to a local "on site" level. Ciriacy-Wantrup (1967) has formalised the hierarchial structure of decision-making and maintains that decisions occur at three different levels - an operational (the lowest), an institutional, and a policy level. Bromley (1977) has expanded this framework and added a constitutional level. A summary of this hierarchical decision-making structure can be seen below:

1. Decisions at constitutional level determine the basic rules and statutes of society. e.g., Parliament, Parliamentary select committees, cabinet committees, caucus committees.
2. The second level is the legal framework. This includes the interpretation of laws which determine the range of institutional relationships and structures. e.g., Planning Tribunal, High Court.
3. The organisational level gives meaning and substance to the policies and laws above. It will include regional and local bodies, government departments.

4. At the operational level decisions are implemented from the decisions of the agencies at the organisational level. Here changes result more from second level legal or policy changes than from changes at the organisational level.

(Neeson 1983: 47-48)

With respect to the consideration of Maori values, attention is directed here at the upper levels of the decision-making. It is beyond the scope of this study to analyse the entire decision-making process. As a result, three components considered integral to the incorporation of Maori values are investigated. The first examines the provision within the major environmental legislation for the inclusion of Maori values. Such an examination is important because the legislation establishes the rules and parameters within which decision makers, at the levels identified, operate. The second component investigated is the communication which exists between Maori groups and those people within decision-making bodies. As Maori values are foreign to many within these bodies, it is essential that they are given the opportunity to understand Maori concerns, and that in turn, Maori people are able to articulate proficiently with the decision-making procedure. Finally, the Planning Tribunal, established under legislation, is the primary judicial body involved with the resolution of environmental use and conflict. For this reason, attention is centred on the means by which it considers Maori values.

4.1 ENVIRONMENTAL LEGISLATION

For most of the period since 1875 when Chief Justice Prendergast became head of the New Zealand judiciary, the Treaty of Waitangi which guaranteed the protection of Maori interests as mentioned in chapter two, has not had recognition in statutory law. Because of this, the Treaty has been unable to be enforced in New Zealand courts. Moreover, Kenderdine (1985) notes that in the 145 years since the signing of the Treaty 14 Statutes have been introduced which impose upon principles of the Treaty.[2] In addition, 3,000,000 acres of land were confiscated after the Land Wars, 60,000,000 acres transformed from communal title to individual title, and various other Acts and bodies established to direct and oversee fisheries, harbours, and waterways. State departments and authorities have taken the place of traditional Maori authorities with regard to environmental

management. The following discussion investigates the degree of credence given to Maori values and cultural concepts both by major environmental legislation and within government departments concerned with resource management.

4.1.1 Town and Country Planning Act 1977

The submissions made by the New Zealand Maori Council to the planned amendment of the Town and Country Planning Act in 1973, pointed out that "in the Maori view land was endowed with an intrinsic value 'infinitely greater than its commerical worth'" and that in spite of the fact that the majority of Maoris lived in the cities, the emotional ties which link Maoris to their land are as strong today as they ever were (Isaac 1980: 5-6). Largely in response to these submissions the 1977 Act gave specific recognition to Maori concerns. Section 3(1)g stated:

> ... the following matters which are declared to be of national importance shall in particular be recognised and provided for: the relationship of the Maori people and their culture and traditions with their ancestral land.

Together with seven other sections,[3] s3(1)g was considered to be of national importance in environmental management. In addition, s4 of the Act ensures that Regional District and Maritime Planning:

> "shall have for their general purposes the wise use and management of the resources, and the direction and control of the development of a region, district or area in such a way as will safeguard the health, safety, convenience and the economic, cultural and social and general welfare of the people and the amenities of the region.

Further on in s36, provisions are also included for Local Authorities to have regard to different Maori and minority uses. This includes provision for Marae and ancilliary uses, urupa reserves, pa and other traditional and cultural Maori uses, and the relationship between land and water use.

Although statutory recognition to this degree led to the belief that Maori interests were adequately protected, difficulties have still arisen. In particular, debate has focussed on the Planning Tribunal interpretation of "ancestral" land. In the 1978 case, Quiltet v Mongonui County Council the appellant wanted to construct a shed on land that Maori people regarded as important ancestral land because it was the site of an old burial ground. The Tribunal ruled that as the land was no longer in Maori ownership , it could not be considered ancestral land. The Judge in this case considered it a "startling proposition" that land not owned by Maoris be considered ancestral. However, as Palmer (1982: 35) comments:

> ...nothing in the paragraph 3(1)g specifically requires the ancestral land to be in Maori ownership and, with respect, it is considered that this interpretation is too narrow and it is the history of the land which is important, not the issue of ownership.

The issue has yet to be debated fully in court. Planning Court Judges appear reluctant to rule on ancestral land without a Parliamentary directive (Treadwell pers. comm 28.7.86).

Furthermore, Kenderdine points out that the section providing for Maori interests is but one of a number of other issues of national importance. Citing Orton V Taupo County D no. A93/84, she notes:

> "precedence has established that s3(1)g of the Town and Country Planning Act should be considered in the context of the whole Act and that the section is not to be read as relating to absolutes but merely to important factors to be taken into account with everything else. The degree of national importance apportioned to one of the criteria detailed in this section may be in direct conflict with another and in pursuing the conservation, protection and enhancement of the physical, cultural and social environment, account must be taken of all New Zealanders" (1985:254)

4.1.2 Water and Soil Conservation Act 1967

The long title of the Water and Soil Conservation Act (W SC Act) outlines the philosophy adopted for the use of water.

> An act to promote a National policy in respect of natural water and to make greater provision for the conservation, allocation, use and quality of natural water and for promoting soil conservation and preventing damage by flood and erosion, and for promoting and controlling multiple uses of natural water and the drainage of land, and for ensuring that adequate account is taken of the needs of primary and secondary industry, community water supplies, all forms of water based recreation, fisheries, and wildlife habitats and of the preservation and protection of the wild, scenic and other natural characteristics of rivers, streams and lakes.

Neither in the title nor elsewhere in the Act is recognition specifically given to Maori values. They are, by assumption, part of the public interest, and therefore, have no special standing. Any case for their protection, therefore, must be claimed under a general criteria for their consideration. The Act also provides for rivers and waterways to be used for the transport of waste and sewerage and water rights are able to be issued for this purpose. Section 21(3) specifies that one of the functions of natural water is for the carriage of wastes, and acknowledges the right of regional authorities to use waterways for the emergency discharge of effluent if sewage treatment should fail. This clearly conflicts with a Maori perception of water, as illustrated in the Kaituna River case mentioned in chapter two. Traditional practices regarding water centred around the preservation of its mauri, of which there were several classifications (see appendix 2) which determined how they were to be used. In addition, rivers and estuaries have been traditional centres for food collection, and many had special significance to particular tribes for their medicinal and spiritual qualities.

The consideration of spiritual values associated with water was dismissed in the 1982 case Minhinnik v Auckland Regional Water Board and Waikato Valley Authority. The objectors had maintained that the mixing of water from the Waikato River and Manukau Harbour in conjunction with the New Zealand Steel Mill expansion, would be spiritually and culturally polluting. However, the Judge concluded that "there is nothing in the Act which will allow us to take those purely metaphysical concerns into account. To the extent that spiritual and cultural values are incorporated in technical and factual considerations they are recognised under the Act but not further." (Minhinnik v the Auckland Regional Water Board and Waikato Valley Authority (1982) Recent Law 190.)

4.1.3 Environmental Protection and Enhancement Procedures

Following initiatives in North America, New Zealand introduced in 1974 its own environmental protection and enhancement procedures (EPEP). These were to form the basis for environmental impact assessment (EIA) and reporting (EIR). The EIA process introduced in the EPEP was not a statutory system, its authority stems from a cabinet directive, not legislation (Morgan 1983). The EIA process is included in only two statutes, the Mining Act 1971 and the National Development Act 1979 - which is soon to be repealed. The Commission for the Environment, established in 1972 as an independent advisory body to the Minister of the Environment, is responsible for administering the EIA process. The Commission audits EIAs and presents any evidence on the environmental consequences it considers to be relevant. It too has no statutory powers.

Although the initial reaction by many to the introduction of the EPEP procedures and EIA in the 1970s was optimistic, expectations were not fulfilled by the general operation of the system. First, subsequent revisions introduced four alternative approaches to evaluation, the formal EIR process being reserved for major projects of significant impact. Of the three other alternatives, only one guaranteed public involvement (Morgan 1983: 149). The National Development Act further limited public participation by restricting the breadth of issue the Planning Tribunal was able to consider. Second, although impact assessments take place before the granting of consents by the Planning Tribunal, the audits are not admissable as evidence at any Tribunal hearings (Kenderdine 1985).

The result has been that many EIAs have been conducted by the Authority concerned with granting consents to a project with little, or any, public and therefore Maori involvement. In cases where a more formal EIR has been undertaken, audits have been carried out by the Commission for the Environment. These have frequently supported the protection of Maori values. Among the more notable where the Commission for the Environment addressed itself to Maori concerns, have been the Ohaaki Geothermal Power Station in 1978 near Taupo, where the preferred option of the Commission was eventually adopted; the Synfuels Plant in Taranaki; the New Zealand Steel expansion in South Auckland; and the Kaituna River Pipeline where the Commission backed up the Maori concerns and recommended against the pipeline (ibid). However, because these audits are

unable to be used as evidence in Tribunal hearings, they have had little bearing on the cases heard.

4.1.4 Public Works Act 1981

Following the introduction of the Public Works Act 1981 (PWA) the power to take land compulsorily has been limited to defined "essential works" (Palmer 1982).[4] The list of essential works defined in s2 PWA is still long.[5] Where land is deemed to be needed for an essential work, the PWA emphasises that prior negotiation must take place beforehand. The owner, if negotiations do not produce agreement, has a further opportunity to object at the Planning Tribunal. Here, both the objector and the Tribunal have the right to inquire into the extent to which alternatives will meet the objectives of the Minister or local authority. In the discussion of alternatives, the matters of national importance identified in the TCPA 1977, for example, s3(1)g, are able to be taken into consideration. Under the PWA, the Tribunal is directed to prepare a report as to "whether the proposed taking is fair, sound and essential for achieving the objectives of the Minister or local authority."

The Tribunal findings, however, are not binding under the PWA and the Minister is able to proceed with a work regardless of the recommendations of the Tribunal. Where acquisition proceeds, compensation for land taken is calculated on current market values, although an attempt has been made to facilitate an exchange of land. The only allowance for compulsory taking of land (see s62, 72) is a $2000 home loss solatium grant for a person dispossessed from a private home (Palmer 1982). In the removal of the Rotowaro township, as part of the Waikato Coalfield developments, this was found to be insufficient to cover the extensive costs of shifting house.[6] More importantly, monetary compensation for acquisitioned land, raises the question as to whether this is an appropriate means to compensate Maori people whose attachment to land is demonstrably more significant than can be measured simply in terms of market value. In short, the question to be asked is that whether ancestral land be measured in dollar values.

4.1.5 Government Departments

Our present state authorities have originated from a Western cultural foundation. For the most part, the functioning of these insititutions have been accepted as being universally applicable, given the policy integration. Recently, however, there has been some questioning of how culturally appropriate these are. The most notable examination has been the Ministerial Report on the Department of Social Welfare. The findings of this report noted that the Department did not provide for the cultural requirements of Maori people. It concluded that while in general the staff were dedicated and committed, the Department itself reflected aspects of institutional racism.

The task of Government departments is to put into practice the policy of the elected government. Although their range of activity is determined by these policies and the legislation under which they operate, they also possess them considerable discretion. While present departments are making some moves to accommodate and incorporate Maori values, the factors above which guide their operation are frequently used as an explanation as to why these initiatives do not progress further (see Douglas 1984: 46-49). Mahuta argues that state authorities have considerable flexibility which would allow them to be more sensitive of Maori concerns if they wished to be. In support of his argument, he questions, for example, why in the space of one decade there have been two other possible sites found for a thermal power station, when during the proposals for the Huntly Number One, it was maintained by the departments concerned there existed only one suitable site - directly adjacent to the Waahi Marae. In another example he refers to the taking of land under the Public Works Act. Here, Mahuta maintains, the understanding has been that once the land has been taken, and no longer required, for instance by the Ministry of Works, it should be returned to its original owners - yet in the cases of Bastion Point, Raglan and Awhitu this has not occurred. He adds, these are examples "of where, when Maori try to interact with departments and authorities, the rules are being changed all the time, but only from one side. Our people see themselves continually as the victims" (ibid 1984: 48). Often, insensitivity is the result of a poor understanding of the values and activities of the other group. Communication therefore, is an essential component and is the subject of discussion below.

4.2 COMMUNICATION

> "The critical issue is communication, between the planners and the community and within the community. This implies that there must be some people available to do the communicating, people who can comprehend the complexities of the project, including formal planning processes, and convey these to the affected community and transmit local concerns back to the planners" . (E. Stokes 1980: 11)

In order for Maori values to be taken into account they need to be communicated to those in decision-making positions. Similarly, proposals for development projects or environmental change need also to be communicated to Maori people most likely to be affected. The following section investigates the means by this occurs and to what extent it can be deemed adequate.

4.2.1 Representation

The introduction of the Town and Country Planning Act in 1977 included a provision for the first time for Maori representation on regional planning bodies. Its aim was to increase the number of Maoris in decision-making and provide for greater input. The Act states:

> "Where in the opinion of the united or regional council there are significant Maori landholdings within its region, the Council may request such Maori District Council as it considers most appropriate to nominate a representative of the Maori people in the region as a member of the regional planning committee."

Although the provision is a first step towards the inclusion of a greater Maori presence, it has also created some difficulty. First, as Anderson (1983) notes, the decision to include Maori representation is discretionary. It is dependent on the phrase "significant Maori landholdings" which is that land under Maori ownership. This could be taken to mean the size of landholdings, their economic potential, or their cultural significance to the people, particularly if the land area is diminished from traditional times (Asher 1980). A valid question would be to ask why size of population is not a factor. Furthermore, the decision to include Maori representation is made by the regional body. In the case of the Auckland Regional Authority Planning Committee, representing an area with a large Maori population, this was only passed by the consenting vote of the chairperson after a Maori deputation had presented its case (Anderson 1983).

Second, tribal boundaries, Maori District Council boundaries, and united or regional council boundaries do not correlate, as can be seen in maps 1-3. There is a problem therefore, of which Maori District Council is "most appropriate" to be represented on the regional body. Moreover, the member chosen by the District Maori Council may not represent the greatest number of people, or conversely, the greatest land area, or even the dominant tribe. Whatever the outcome, it is likely that some tribe within the regional council area may not be represented (ibid). Mahuta, with reference to the Tainui Trust Board, adds, "local Maori groups, whether they are tribal or whatever, clearly identify the most appropriate Maori authority they believe should represent them. But they have no status in terms of local authority" (in Douglas 1984).

An additional problem with the District Maori Councils is their lack of resources. Although they receive copies of regional and district planning schemes, there is commonly too few sufficiently qualified staff, who would be required on a voluntary basis, to scrutinise and lodge objections to these. The underfunded and staffed nature of these organisations reduces their effectiveness in communicating particular Maori concerns.

4.2.2 Notification

The construction of Huntly Power Station in the 1970s presented the Tainui people in the region with the task of dealing with bureaucratic procedures. On the subject of public notification of projects such as the Huntly Power Station, Stokes writes:

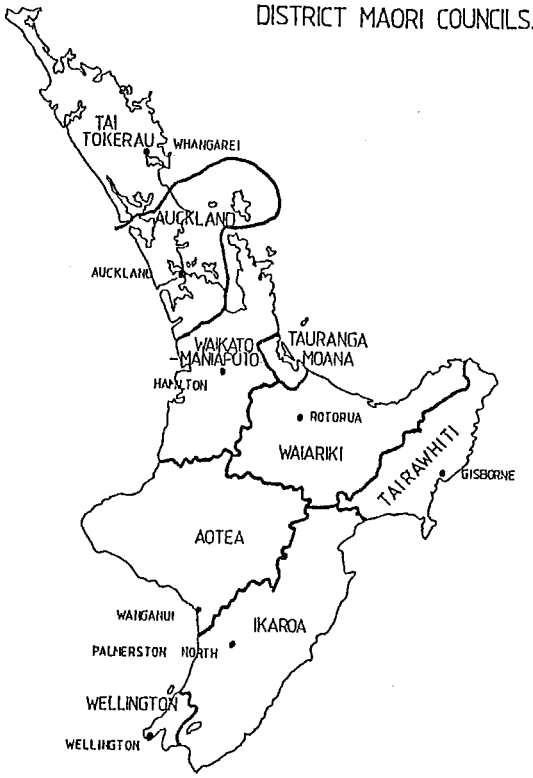
> The form of public notification of a public work is usually a Public Notice in the newspaper which may not be seen, or a letter, written in a language which is often incomprehensible to the average layman, Maori or Pakeha." (1980:10)

By law, notification of a development proposal needs only to be made, other than via public notification in a newspaper, to those landowners who will be directly affected. Many Maori people are likely to have cultural affiliations with the area, despite it not being in their ownership. Moreover, projects do not have isolated geographic impacts. The coal mining operations a number of kilometers from Waahi Marae, for instance, have still had a deleterious effect on the number of puhi (eels) caught in a stream close to the Marae - traditionally puhi have been a source of mana for hui

A COMPARISON OF THE BOUNDARIES BETWEEN THE DISTRICT MAORI COUNCILS, MAORI TRIBES AND REGIONAL COUNCILS

MAP : 1

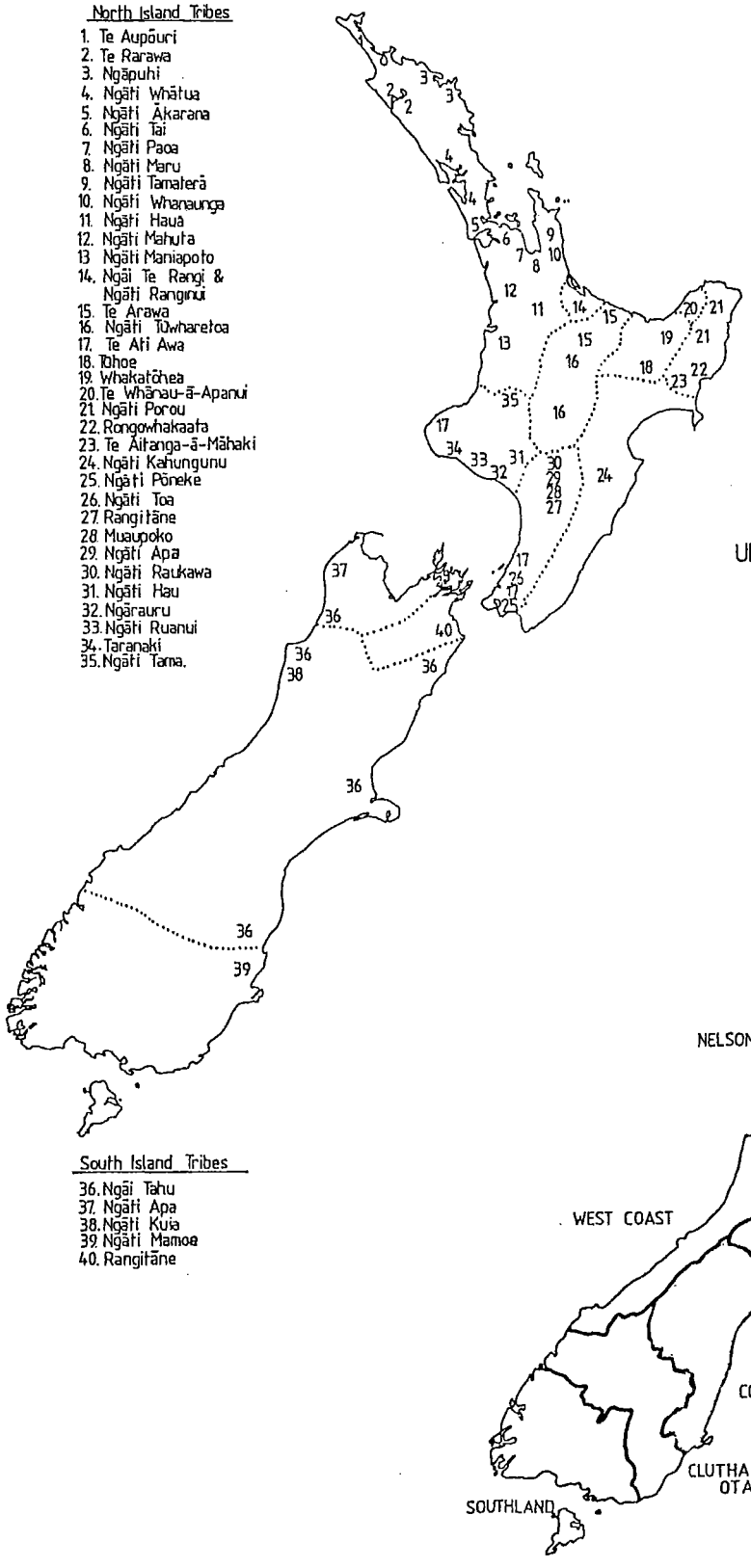
DISTRICT MAORI COUNCILS.



NOTE: TE WAI POUNAMU DISTRICT MAORI COUNCIL IS RESPONSIBLE FOR WHOLE OF SOUTH ISLAND

MAP : 2

MAORI TRIBES OF NEW ZEALAND



North Island Tribes

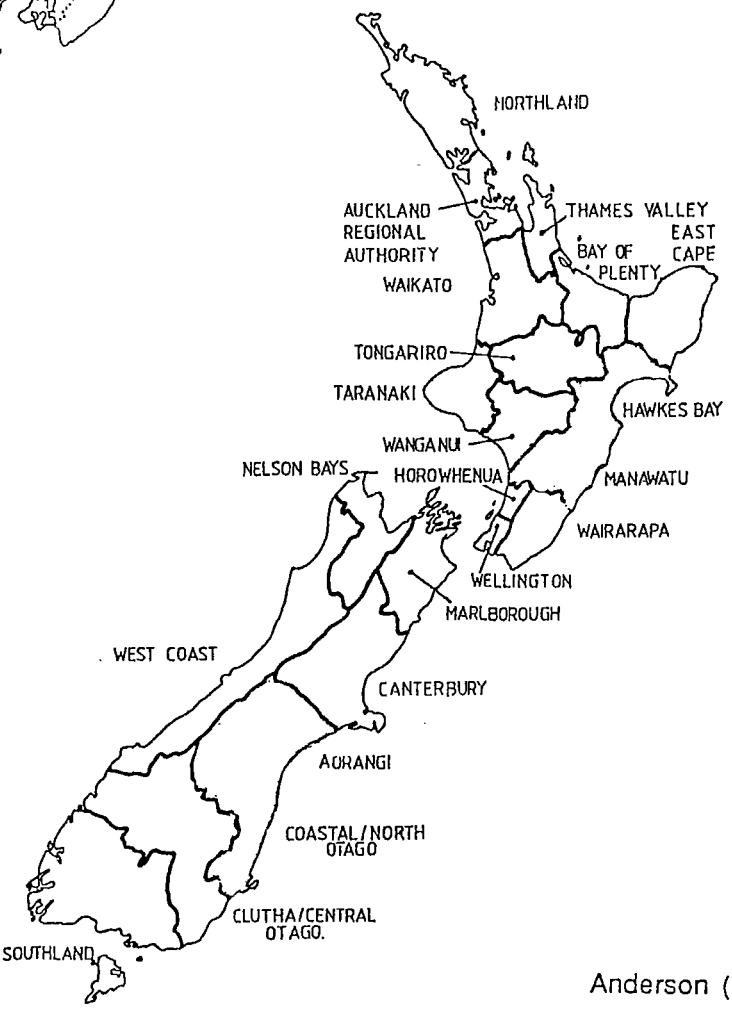
1. Te Aupōuri
2. Te Rarawa
3. Ngāpuhi
4. Ngāti Whātua
5. Ngāti Akarana
6. Ngāti Tai
7. Ngāti Paoa
8. Ngāti Maru
9. Ngāti Tamaterā
10. Ngāti Whanaunga
11. Ngāti Haua
12. Ngāti Mahuta
13. Ngāti Maniapoto
14. Ngāi Te Rangi & Ngāti Ranginui
15. Te Arawa
16. Ngāti Tūwharetoa
17. Te Ati Awa
18. Tūhoe
19. Whakatōhea
20. Te Whānau-ā-Apanui
21. Ngāti Porou
22. Rongowhakaata
23. Te Aitanga-ā-Māhaki
24. Ngāti Kahungunu
25. Ngāti Pōneke
26. Ngāti Toa
27. Rangitāne
28. Muaupoko
29. Ngāti Apa
30. Ngāti Raukawa
31. Ngāti Hau
32. Ngāruauru
33. Ngāti Ruanui
34. Taranaki
35. Ngāti Tama.

South Island Tribes

36. Ngāi Tahu
37. Ngāti Apa
38. Ngāti Kuia
39. Ngāti Mamoe
40. Rangitāne

MAP : 3

UNITED AND REGIONAL COUNCIL BOUNDARIES



Anderson (1983)

and other occasions. No requirement presently exists for Maori authorities, whether they be tribal trust boards or the District Maori Council representative, to be notified of any impending resource development in the area, other than the general public notification through the newspaper. Furthermore, this form of notification is generally written in complex lanaguage which is incomprehensible to those not skilled in reading it.

Stokes goes on to say that the same can be said of much of the planning legislation and environmental impact statements. She adds, "Admittedly, the technical data must be included and the processes described may be complex. Unless all this is translated into simple terms and communicated effectively to the people most concerned, the owners and residents in and around the project site, the result is anxiety and stress about changes that are perceived as imposed from outside by government" (ibid:10). This is particularly the case in the Waikato region, where land confiscations following the Waikato Land Wars last century have produced a strong sense of distrust of government authorities which is still foremost in the minds of the Tainui Maori.

4.3 PLANNING TRIBUNAL

The Planning Tribunal has similar powers to that of a District Court and is presided over by at least two members of the Tribunal, "of whom a Planning Judge or alternate Planning Judge is one" (s 134 TCPA 1977). The Tribunal was established in 1977 with the TC P A and is the principal body which passes judgement on different uses of the environment. For example, the Tribunal may decide whether to grant a right to discharge effluent into a particular water regime. Evidence in cases such as these are heard from both those in opposition and in favour, and each is able to cross-examine the other during the hearing.

Such a procedure can be a daunting prospect for a Maori community with little knowledge of court procedure and insufficient resources to engage legal experts. The Te Ati Awa challenge to the discharge of waste from the "Think Big" Projects sited in Taranaki illustrates the point. Both the Methanol Plant and the Motonui Synthetic Petrol Plant required water rights to discharge waste. Aila Taylor tells of the formidable task of appearing against large development concerns with their retinues of scientists, engineers and lawyers (pers.comm,15.5.86, Douglas 1984). In an unfamilar

environment Aila Taylor over the period of weeks the Tribunal was sitting, headed the opposition of the people of Te Ati Awa, many of whom, because of the history of the area, were extremely suspicious of appearing before a "Pakeha" court. Even in the more familar surrounds of the Manukorihi Marae, where the later hearing of the Waitangi Tribunal took place, Taylor explained that "It has been quite an exercise for the elders to participate in an exercise such as this. We are a proud people. There are certain things we don't wish to advertise, and neither do we seek to make a spectacle of ourselves" (Waitangi Tribunal 1982).

The Planning Tribunal contains limitations for the adequate hearing of Maori values. First, for many Maori it is an alien environment in which they feel uncomfortable communicating their concerns. Although they might participate with the aim of safeguarding their interests, the procedure of cross-examination in the hearings often serves to make them feel the guilty party for opposing developments (A Taylor pers. comm.). Second, the Tribunal hearings are quite often lengthy and require active participation for considerable periods of time. This may require objectors to take time from work, necessitate mobilising other witnesses, and entail expensive preparations in order to conduct a convincing case. Unlike a developer who possesses and sets aside resources to employ experts and legal help, the Maori community usually lacks resources, and is not eligible (at present in any case) for financial assistance. Although ideally the Planning Tribunal will take this into consideration, it can often mean that Maori concerns are not as fairly represented as those proposing a development. As the Waitangi Tribunal (1982) comments on the lack of a Maori presence when a water right was granted to the joint scheme of Borthwicks Freezing Works and Waitara Borough Council:

> "The Te Ati Awa people were not represented when the Waitara Borough Council obtained its water right in 1973. We were advised that the Aotea District Maori Council voiced a concern but due to ignorance of planning procedures and financial constraints did not pursue its concern at the hearing. Not only were the Maori people unaware of procedures but also the general public." (1982:20)

The Planning Tribunal is presided over by one or more Planning Court Judges. The Tribunal passes judgement based on the evidence presented and the discretion the law provides. They naturally possess a view of the world that reflects their cultural and social environment, typically a Pakeha perception. This perception, as discussed in chapter two, places most weight or value

upon evidence that is seen to be "scientific" - most commonly data collected and interpreted by physical scientists. Cultural evidence by comparison, is generally either rejected, given less weight, or misunderstood, often because it is outside the realm of experience of the decision-maker. The most obvious example has been the consideration of Maori spiritual and cultural concerns, when a development is opposed on non-scientific grounds.

Judge Turner (1985) in a recent address, voiced opposition to evidence that is not rational. On the subject of spiritual values he states:

> "It is possible that (a) particular spiritual belief had its origin in some natural event long past and that the Maori people have spiritualised what they *could not explain rationally*." (emphasis added)

He goes on to say that to give spirits power over human activity "would be rejected by most people as sheer superstition, as beliefs which restrict mankind unreasonably." He states in reference to those who hold these spiritual beliefs, "we have been promised that we shall know the truth and that the truth shall set us free. But perhaps some have difficulty in recognising the truth when they see it." Furthermore, the adoption of a perspective that acknowledges the physical world has a life or spirit of its own is rejected. To adopt such a view, he notes, is to "denigrate the status of mankind. . . It fails to give man his rightful mana and dignity with the physical world" (1982:23).

Ironically, the main focus of his address (entitled "Decision-making: is reason sufficient?") is that decisions cannot be made on purely scientific grounds, because some matters are not suceptible to proof, but need to include a value judgement. For himself, Judge Turner accepts only one possible relationship between humankind and nature". . .(that) is a steward on behalf of the one who created it. . .(and) accept the responsibility God has placed in humans." He quotes from Genesis to support his view. Thus, although Judge Turner accepts that in many cases a value judgement is required, for him this should essentially reflect a Western oriented Judeao-Christian perspective. Similar sentiments have also been communicated by Judge Treadwell who finds it difficult to understand Maori attitudes which ignore scientific evidence (pers. comm. 28.7.86). The attitude of the Judge above is indicative of a person with a particular perception of the world attempting to comprehend another perception which was derived from an alien background. It raises the question of whether the values of one culture can be compared and evaluated alongside

those of another. More generally, these judicial attitudes mark the end of decision-making procedures, which as with the other areas examined, highlight obstacles which preclude the specific consideration of Maori values.

CHAPTER 5

POLICY OPTIONS

The problems identified within the areas discussed in chapter four, have meant that Maoris do not articulate adequately with the various procedures and bodies, and as a consequence, the consideration of their values is compromised. In light of the findings in chapter three, maintaining this present situation as a tenable proposition can be excluded. Attention, therefore, is directed at ways in which decision-making procedures might be changed to improve the consideration of Maori values.

The aim of this chapter is to investigate some means to improve the status quo. Two options are considered. The first option is based on the proposition that tinkering with the present system will produce an acceptable solution. Essentially this entails the need to modify and clarify existing legislation, improve channels of communication, and generally enhance Maori access to the appropriate bureaucratic structures. The implications of adopting this alternative are discussed, and in light of these, a second option forwarded. This option investigates a change outside present decision-making procedures. The thesis here is that through early mediation a solution can be found which avoids many of the conflicts characteristic of many present decisions. The two options are not separate, but complementary - the second advancing the case further than the first option.

5.1 OPTION ONE: CHANGES TO EXISTING DECISION-MAKING PROCEDURES

This option investigates the way in which existing procedures can be altered to take more adequate account of Maori values. It follows essentially the three main areas identified in chapter four of namely legislation, communication and the functioning of the Planning Tribunal.

5.1.1 Environmental Legislation

Town and Country Planning Act 1977. The present provisions in the TCPA under s3(1)g and in s4, give adequate account to Maori values. The problem here is not in the wording of the provision, but in the way the idea of 'ancestral land' is interpreted. Kingi (1983) maintains that "framing of the term within restrictive legal partitions or frameworks . . . is tantamount to negating (or ignoring) the importance of these terms in a cultural context." So long as 'ancestral land' is ruled by the Planning Tribunal as being only that under Maori ownership, decisions which reflect the Maori attachment to land will be stymied. One possible solution is to amend the legislation to give a broader definition of 'ancestral land', - an unnecessary action if the interpretation of s3(1)g was wider.

While the Planning Tribunal is hesitant to introduce a broader definition of ancestral land on non-Maori owners, precedents do exist for restrictions which limit the activities of landowners, whether these owners be private or the Crown. For example, under the Historic Places Act 1980, the New Zealand Historic Places Trust has the power to classify buildings as having sufficient historic significance to merit preservation. A protection notice, therefore, may be served on the council and owner/occupier by the Trust. Likewise, important ecological areas on private or Crown land can also have restrictions placed on them - wetland areas or areas of native forest can be subject to certain controls, for example. A parallel can be drawn between the protection of places for historic or ecological reasons and a waahi tapu (sacred site) or urupa (burial site) which Maori people may consider sacred. Both will suffer irreparable damage if unrestricted use is allowed to proceed.

In the case of urupa, the most sacred of Maori sites, three Acts govern the way in which these are protected. These are the Historic Places Act 1980, the Maori Affairs Act 1953, and the Town and Country Planning Act 1977. Under the 1980 Historic Places Act an historic or archeological site like a urupa can be protected by the Historic Places Trust serving a notice on the local authority and landowner. A problem, however, occurs when other sites or natural features which Maori consider valuable, and therefore wish to protect, are not known to the local authority before the application to develop an area is heard. In many cases this is because there is a lack of communication between

the Maori group and the authority. On other occasions the kaumatua and kuia of a tribe, who may know of particular areas of special significance, are not willing to divulge the information to local authorities.

On the Maori position with regard to waahi tapu sites (sacred sites) Kingi (1983) states:

a) The tangata whenua must be in a position to discuss issues among themselves and make decisions about the immediate and future value of waahi tapu in the area. They must also clarify their wish to promote the preservation and enhancement of particular waahi tapu which may be under threat from development or from fossickers.

b) The elders of tangata whenua must also be prepared to make decisions on waahi tapu which may be in danger of becoming 'lost' through not being identified to younger generations and through the loss of knowledge associated with them as tribal elders pass on. Other decisions must be made about waahi tapu which have been known but which cannot be locally identified, particularly when these are exposed by land-use developments of various kinds. Knowledge about these places should be retained because they are part of the history, culture, and tradition of the tribes associated with them. Because it is also the cultural heritage of descendents of these tribes there is a responsibility by those who still exist to communicate this heritage.

c) Tangata whenua or representatives appointed by them must be capable of communicating directives to public authorities when the need arises. Appropriate regulations including policies and statements concerning waahi tapu must be approved by these representatives or the tangata whenua as a whole. This will ensure that locations and knowledge of waahi tapu is regulated according to the wishes of these people.

It goes on to add that waahi tapu can be protected most adequately if their position is known approximately. There is a degree of onus on Maori communities to communicate these to public authorities. However, it acknowledges that such information may not want to be publicised. The decision must, therefore,be one for the people concerned.

Ancestral land, however, has been given a wider definition by Maori groups than one which applies just to sacred sites. In addition to waahi tapu, Kingi (1982) maintains ancestral land includes "areas of water and land traditionally utilised for cultivated and uncultivated foods and other resources; traditional fishing grounds; traditional recreational grounds and waters; and areas containing features and structures which contribute to parts of or the overall spiritual, historical and cultural heritage of a tribe, sub-tribe, or whanau." This definition is supported by the Auckland District Maori Council (1980) who claim ancestral land is "land of our ancestors. In this sense Aotearoa is the Maori peoples' ancestral land... ."

The above definition presents difficulties for land under ownership other than that of Maori. For the purposes of this discussion, it is possible to distinguish three categories of land tenure. The first is ancestral land under Maori ownership. This type of tenure presents no problem to the legislative interpretation of ancestral land (except for some cases where compulsory acquisition can occur). The second category is land under Crown ownership. Here the Maori, as with other public groups, can make their interests known through decision-making procedures, for example, in a water right hearing. There is, therefore, some capacity for Maori concerns to be recognised. Finally, the third tenure type is land under private non-Maori ownership. A definition of ancestral land as defined above could restrict the actions of landowners who feel it is their legal right to make use of the land as they see fit.

A real problem, therefore, exists between ancestral land as defined by the Auckland District Maori Council, and land under the above forms of tenure - each of which will recognise Maori interest in land to a different degree. No solutions are proffered here. The problem is a manifestation of the wider issue of applying a European concept of land as a commodity with definite rights of ownership upon a concept of land where the cultural link assumes greater importance than tenure. Overcoming the gulf between the two perceptions requires accommodation both on the side of the Maori and the public authority.

Water and Soil Conservation Act 1967 Unlike the TCPA, there is a need to amend this Act to include provision to recognise the specific cultural relationship between the Maori and their use of water. To date there has been no specific recognition which would distinguish this relationship from all other public users - despite the very different attitudes to water. The provision would need to contain reference to both cultural and spiritual concerns, because as judgements in previous cases have shown, (see Minhinnik v Auckland Regional Water Board) it is evident that those in decision-making roles who possess a different perception of the environment will not uphold spiritual values unless these are specifically stated in the legislation. At the time of writing a new provision was planned to consider Maori concerns in the draft Water and Soil Conservation Bill

The new clause reads:

> The physical, or cultural resources, or interests associated with any lands, waters, sites or fishing grounds, in so far as they contribute to the heritage and to the general, or to particular aspects of the well being of Maori people of the affected area or its surrounding environment.

The Public Works Act 1981 The PWA permits the acquisition of land for a public work, regardless of the designation for that area of land in the district scheme. This means that even though an area of land is in Maori ownership, protected under the district scheme or through the section 3 provisions of national importance in TCPA, it is still able to be taken by the Crown. The example of the Ohaaki Geothermal Development in the case Maori Land Trust v Minister of Works and Development provides a good example of this situation but also illustrates some means by which resolution might occur. In this case, the Ngati Tahu, who owned the area needed for geothermal development, opposed the acquisition of their traditional land (Ohaaki is located on the western side of Lake Taupo). They argued to the Planning Tribunal that their land should be protected under s3(1)g of the TCPA and that this section by implication empowered the Tribunal to set conditions controlling the degree of land alienation (1980 NZTPA 108). In particular, the Ngati Tahu favoured a lease arrangement, but opposed compulsory acquisition.

The Tribunal, however, did not accept that section 3(1)g of the TCPA by implication could set conditions on another Act. It ruled that "the Town and Country Planning Act 1977 is concerned with (inter alia) land use - the Public Works Act 1928 (inter alia) with land acquisition" (in Anderson 1983:12). Anderson notes that "section 3(1)g, therefore, did not in this case, provide any protection for continuing land tenure of Maori land in Maori ownership." The case illustrates the limitations of the TCPA and, therefore, the Planning Tribunal, and indicates a need for the PWA to be brought under the jurisdiction and kept consistent with the TCPA (especially section 3). The case above was successfully negotiated on a lease arrangement whereby the Crown leased the land required for development, and the Ngati Tahu also held firmly to the principle of Kia mau Ki te whenua (hold onto the land). The solution though, because of the situation described, had to be resolved between the parties outside the forum of the Tribunal.

Environmental Protection and Enhancement Procedures: The environmental protection and enhancement procedures established in 1973 in New Zealand prescribe the need for EIRs to be commissioned for major developments. Generally the reports have been wide-ranging in the detail of the envisaged impact. Many have, however, lacked detail on Maori values other than a resume - of archeological sites considered to be of importance. The very extensive EIR on the Motonui Synthetic Petrol Plant, for example, contains a brief section on "historical sites." Other sections of concern, for instance, chemical and ecological effects and impacts contain exhaustively comprehensive information prepared by scientists.

There are two points to be made with respect to this current trend of impact reporting. First, to itemise only the known historic sites is to omit fundamental information. For instance, some sites or natural features may be unknown outside of the tribe or hapu being considered. Most importantly, it is the total relationship with the landscape that is generally of significance, and this cannot be constrained to isolated sites. This point relates back to the definition of ancestral land. Thus in the Motonui example, the possible disecration of important sites from the siting of the Synfuel Plant did not become the real issue, but rather the relationship of the Ati Awa people to their traditional food gathering areas located on the coastal reefs. Second, the only means of collating this type of culturally significant information is through direct contact with the appropriate Maori authority, in most cases the tribe or hapu concerned. This entails, therefore, seeking out the expertise of Maori "experts" or kaumatua (respected elders) who possess the wealth of knowledge of an area and its significance, and are able to speak on behalf of the people they represent. It reinforces the need expressed in chapter four, for the clear identification of the appropriate Maori authority. Although the kaumatua may lack the formal education of the scientists, they are nonetheless, valid experts in their own right. They should, therefore, be respected as such and paid for their services as consultants.

The activities of the Ministry of Energy in the development of the Waikato Coalfields give some indication that these recommendations might already be heeded. For the preparation of the EIR for the Huntly West Mine Number One and Rotowaro Mine the Ministry employed the services of kaumatua, through the Tainui Trust Board, as consultants on spiritual and cultural matters pertaining to the development (see Shearer 1986). Somewhat incongruously, these reports have been labelled as "technical" reports, reflecting the difficulty of dove-tailing what are effectively metaphysical concerns into a scientific framework. An important characteristic common to both reports is that they are not confined to the specific sites. The geographic boundary of the concerns of the kaumatua extends throughout the tribal region. Kinship ties link people who live away from the affected area but return to the marae for important occasions or to make use of the natural environment during different seasons-fishing grounds, for instance (Nottingham 1986). As Minhinnik states:

> You affect us in the Manukau and you affect the rest of our people throughout Tainui . . . Let me repeat to you what affects one, affects all of us.
> (Douglas 1984: 34-35)

Environmental and social impact assessments, therefore, must also be cognisant of the boundaries and the limits by which Maori feel themselves to be affected and not be constrained to an arbitrarily designated area defined monoculturally.

More generally, the problem with the present environmental protection and enhancement procedures is that they tend to be grafted on to existing planning procedures and sit outside planning law. At present the audit may recommend "alternative sites for outfalls, different approaches to infrastructure and so on" . . . however it . . . "does not alter the fact that at the end of the day that law under the Town and Country Planning Act 1977 a site does not have to be a best site and that under the Water and Soil Conservation Act 1967 alternative points of discharge do not have to be considered. Methods by which discharge waste can be treated are not examined" (Kenderdine 1985).

There is a need, therefore, for the EPEP to be incorporated more closely in to legislation to enable Commission for the Environment audits to be used as evidence by the Planning Tribunal. By increasing the flexibility of the Tribunal to enable it to use the recommendations of the audit, and also allowing it to consider other options rather than just the proposal put forward, there is greater likelihood of an outcome that is more sensitive to the concerns of Maoris (although it should be noted that the Tribunal is presently able to set safeguards and conditions to be observed by the developer when granting, for example, a right to discharge waste). Different alternatives recommended by the Commission for the Environment, that can be investigated further within the forum of the Planning Tribunal, have greater potential to produce an outcome which does not conflict with Maori values, or at worst lessens any cultural impact. The option chosen, therefore, has most chance of being the "best" option for the greatest number of people.

5.1.2 Communication

Improvement in communication is a two-way process. This involves initiatives from both institutional bodies, increasing their awareness of Maori issues and concerns and improving the process of communication; and from the Maori community enhancing the means by which they articulate with particular institutional bodies. On the topic of representation, Rikys notes that "it is absolutely vital for the development of a strong and vigorous racial climate in New Zealand that opportunities are created at all levels in the power structure for Maori people to participate in and contribute to decision-making" (1980: 27).

Representation: On a national level there is an increasing awareness amongst government departments and other less formal bodies, quangos for instance, involved with resource exploitation and management, to include a Maori input. The 1986 Ministry of Environment Draft Plan contains extensive consideration of Maori concerns. A number of problems can emerge, however. First, the Maori representative who may have considerable expertise in their own tribal area may have less knowledge, or more importantly, feel they lack the authority to comment on other tribal areas. The problem is indicative of a centralised bureaucratic system that wishes to have a Maori representative, attempting to accomodate a decentralised tribal structure. Representation

at a centralised level, therefore, must be cognisant of this. The department concerned must attempt to seek input from the most appropriate Maori organisation to put forward a representative. This may not be an easy task and may involve, for instance, nomination of a longer term representative and frequent secondment of others when dealing with particular tribal areas. To do otherwise smacks of tokenism - a representative simply to fulfill a requirement (Mahuta pers. comm.).

Second, the Maori representatives while asked to contribute their services to the authority concerned, are often unfamiliar with bureaucratic and planning procedures. Thus while these authorities will gain expertise from Maori representation, the representatives themselves are unable to advance their own concerns to the same extent (Ritchie pers. comm. 28.10.86). It would be helpful, therefore, if Maori input was supported in these forums by skilled personnel in order that they too can benefit.

Third, Maori representatives often do not receive any monetary reward for the services they render. Aila Taylor, the spokesperson for the Te Ati Awa tribe in the Taranaki "Think Big" disputes, has been called upon to give advice at a number of different forums. This has been given willingly and generally free despite the considerable time it entails. A similar situation occurs at a regional level. In the Auckland region, for example, the Auckland Regional Authority representative is seen as *the* Maori representative and is called upon to given advice and articulate with an enormous number and variety of groups on a voluntary basis (Matunga pers. comm. 30.10.86). These representatives should be recognised for the expertise they possess and not expected to perform these duties purely from their own resources. If it is accepted that people should pay for the services of an engineer or other professional, so too should Maori spokespersons, experts in their own field, expect renumeration.

On a regional level, furthermore, the Maori representative nominated for the regional planning council has the opportunity to influence and facilitate greater communication between the authority and Maori community. However, the sheer size of this task is prohibitive. More resources are needed to enable these representatives to perform more effectively. Anderson (1983) comments that one way to ensure more effective participation would be for local authorities to assist District Maori Councils to understand schemes by having staff members attend District Maori Council

meetings for the purpose of explaining the schemes.

A primary obstacle to overcome is the choice of the appropriate Maori authority to represent the Maori people. The problem, as identified earlier, with the District Maori Council organisation is that they are based on defined boundaries which are not tribal - and are, in effect, an artificial construction. Membership of Trust Boards, on the other hand, are generally composed of elders of a tribal group who act as spokespersons for the various subtribes and marae within the area. The most developed of these is the Tainui Trust Board in the Waikato, which stretches from Auckland in the north to beyond Lake Taupo in the south. It demonstrates the advantages of pooling resources through a traditional framework in order to secure benefits for the tribe as a whole. It owes its cohesiveness primarily to the Kohitanga (King Movement) to which the tribes and subtribes in the area have pledged allegience, and also to the unifying influence of being forced to react to large resource developments which have been implemented within Tainui boundaries. Trust boards appear in most cases, especially with regard to resource developments in an area, to be the most appropriate authority and, therefore, should be recognised by outside institutions. However, in some cases the District Maori council may be a better representative body. The decision is one for the Maori people of each region.

The wording of the provision under the TCPA 1977 for the nonimation of a Maori representiative, as noted in chapter four, has led to considerable wrangling between regional authorities and Maori communities who felt they should be represented. To a degree this problem will be ameliorated by the Town and Country Amendment Bill 1986. The new section 6(2)c provides for "a representative of the Maori people in the region appointed by the District Maori Council or other Maori authority or organisation as the united or regional council considers appropriate" (Town and Country Amendment Bill).

Although the appointment of a Maori representative under this Bill is mandatory, regardless of landholding, the new provision does, however, raise another possible problem. The regional or united council is asked to choose the Maori authority ("the District Maori Council or other Maori authority"), which it "considers appropriate". This authority will then nominate a representative. The choice as to which is most appropriate is, however, a decision for local Maori communities to make. It

is imperative that the Maori representative be that - representative - and be in contact with, and have the confidence of, the local Maori people. It would be hoped, therefore, that the regional authority contacts all Maori organisations in the area and allows them to make the choice of the nominee.

While tribal trust boards have shown to offer a number of advantages, these boards need to maximise their relationship with local and regional networks. This entails establishing between themselves the boundaries of tribal and hapu territories, and the formation of stronger organisational structures. Some agreement can then be reached concerning sacred sites that each group may wish to be preserved and, where possible, the local authority notified for their protection (Matunga 30.10.86 pers. comm). Furthermore, the identification of one representative structure will improve contact with a developer or institutional body, and facilitate a more unified reaction to development proposals. The experience in the Tainui region has shown how effective this can be (see Egan 1981, and Maori Perspective Report 1984). While a degree of onus lies with the tribal groups, the development of the skills to articulate more closely with outside institutions requires assistance. A scheme whereby planners, or persons of similar professional background, could be associated with trust boards would assist with the development of a more effective interface between Maori organisations and outside bodies. Planners, for instance, currently move easily between government departments; a scheme whereby they could be seconded to tribal boards would have the result of providing one group with much needed expertise and the other an opportunity to gain insight into culturally based problems.

Current trends suggest that the development of tribal trust boards are becoming increasingly recognised as the representative body for Maoris. In the Huntly Power Station development, the Tainui Trust Board became the representative body for the Tainui people. More recently ,the Maori Land Court for the first time upheld the principle of tribal rather than individual ownership of land, investing ownership of a returned block of land in the Kaingaroa area to trustees of the Ngati Manawa (The Star 16 October 1986).

Notification: Current channels of notification of an impending development are restricted to an outline of the proposal in the local newspaper and contact with landowners immediately adjacent to the project site. While the District Maori Council is sent copies of district regional and planning schemes, there is no requirement for early notification of project proposals. Many Maori have important cultural and spiritual attachments with areas of land, waterways etc., which are no longer in their possession. In light of this, development projects, or other environmental uses should be required to make contact with the selected Maori authority regardless of whether the land on which it is to be sited, or other natural feature it may affect, is in Maori ownership. This again re-introduces the problem of ancestral land and emphasises the need for a recognisable and representative Maori body. A full and comprehensive statement of intent regarding development will serve to relieve anxiety carried by an unknown change, and enable a Maori community to respond in a more effective manner.

5.1.3 Planning tribunal

Perhaps the most inhibiting factor identified that faces Maori people once within the forum of the Planning Tribunal, is the lack of resources to voice a more effective case. Reacting to a proposal which may deliteriously affect their cultural practices, they must raise their own funds in order to make their concerns heard. In the Waitangi Tribunal hearing on the Motonui case, the Te Ati Awa people without the money to engage legal services were fortunate to have the services of a lawyer offered to them for no charge. The Treaty of Waitangi Amendment Act 1985 now contains provision in section 8 to assist the claimant. Clause (2) states:

> The Tribunal may appoint counsel to assist the claimant in respect of any proceedings or any part of any proceedings before the Tribunal if it is satisfied that the matter is of sufficient importance or complexity to warrant such an appointment or that it would be unjust to the claimant not to make such an appointment.

This allows, therefore, a Maori group which lacks sufficient expertise to properly conduct a case to have the assistance of legal counsel. Furthermore, clause (3) of the Act contains provision for financial assistance to be given to the claimant, as the Tribunal sees fit. It states:

> Every counsel appointed under this clause shall be paid out of money appropriated by Parliament for the purpose such fee as may be agreed between the Tribunal and the counsel appointed.

Here for the first time a claimant who is reacting to a development proposal, for instance, is able to participate on a more equal basis to the proponents. This precedent has much to commend itself to the operations of the Planning Tribunal. The introduction of a similar system of compensation would redress the balance between, for example, a resourcefully well-endowed developer and an underfunded Maori community.

Other reforms can be directed at the Planning Tribunal itself. The Tribunal at present does not have a Maori member, nor does it require a Maori member to be on it during hearings, despite the culturally sensitive issues it frequently addresses. The inclusion of a Maori advisor or consultant within the Tribunal could assist it towards more culturally aware solutions. Under the Treaty of Waitangi Amendment Act 1985, for instance, the Waitangi Tribunal "may appoint counsel to assist it in respect of any proceedings or any part of any proceedings before the Tribunal." A similar provision could permit the Planning Tribunal to employ Maori counsel for the purposes of a hearing. There are levels at which a counsel might operate. They could be a recognisable body the Tribunal might employ for advice; or alternatively they could perform an intermediary role between the Tribunal and the Maori community. In the latter case, the concerns of local Maori could be communicated to the counsel who might assist in the preparation of their case, and possibly represent the Maori group before the Planning Tribunal. Adopting features such as these would go some way to allay the fears of Maori people who feel they are immediately disadvantaged in the face of a mono-cultural body.

For particular cases where Maori people are particularly affected, a more appropriate venue to conduct proceedings could be the marae. Planning Court Judges have characteristically shunned such a suggestion, fearing that their position might be undermined, or that marae protocol may clash with court procedure, hence placing them in an invidious position (Judge Treadwell pers. comm. 28.7.86). The marae, however, has been used on previous occasions for judical hearings and appeared to function without difficulty. Perhaps the most frightening aspect of a marae location for the Judiciary is simply being in a culturally alien environment - for this reason particularly, the marae may provide a cultural half-way point.

5.1.4 Implications of Adopting Option One

This option involves enhancing the relative position of the Maori to present institutions to facilitate decisions that are more cognisant of Maori values. Through the adoption of a policy such as this, Maori concerns are more clearly demonstrated to decision-makers - even if this is made mandatory through legislative change. The exercise also becomes an educative process both for decision-makers of Maori values, and the Maori of the decision-making process.

Current government initiatives appear to parallel this option. Within the new environmental administration, for example, there has been an expressed objective to abide with and respect the principles of the Treaty of Waitangi. While these aims are laudable, there is some doubt as to whether the numbers assigned to, for example, the Maori secretariat within the Ministry for Environment are adequate, given the extent of their brief. Furthermore, the economic policy of 'user-pays' would appear to work against the promotion of responsive communication. The Ministry of Works in Auckland, for example, who have initiated closer liasons with local Maori, now finds that it is required to charge for its services - an untenable proposition for underfunded Maori groups (M. Matunga pers. comm. 29.10.86).

A further implication is that a policy which recognises tribal authorities (although in some cases some other body might be more appropriate) will place the Maori themselves in a position of greater strength. They will be able to utilise traditional kinship networks to mobilise resources and participate more effectively in planning and resource management forums. Increased participation - through both increased opportunity and with available resources to do so - is again more likely to bring about culturally aware decisions, and foster amongst Maoris themselves the feeling that their values have been recognised.

An option such as this, which proposes incremental change, is a non-threatening one for the Pakeha. It maintains existing structures and improves the means by which Maoris articulate and communicate within them. While this has positive implications, it raises the question of whether such a proposition is valid in a bicultural society. Should present decision-making structures which are essentially English in origin, remain unchanged? Would it be more appropriate if they were altered to reflect a Maori approach?

The most negative implication of maintaining the existing structures is that the Maori position remains essentially a reactive one. This can be illustrated by use of an example. A hypothetical development is proposed on grounds that it will provide economic benefits both for the community and the nation. This project might be opposed by a local Maori community on the grounds that it will offend their cultural and spiritual values. If the proposal proceeds through the various procedures towards final approval, it is highly unlikely that opposition by the Maori community will be upheld - given that the Maori position is judged alongside other issues of national importance, and within an essentially monocultural institutional framework. In such an example, where Maori values are overriden by those of another group, there is a danger that the present mood of optimism, prevalent with many of the current reforms, will falter. Put simply, the situation is one where the concessions made by one group fall short in real terms of the expectations of the other.

The example above could easily be that of the slurry pipeline required for the New Zealand Steel Mill expansion project exemplified in chapter two. It presents a problem of seemingly dealing with a conflict between absolute positions. On the one hand, the only apparently feasible option for the Steel Mill is to take water from the Waikato River, use it to carry ironsand for the smelter, and discharge it into the Manukau Harbour. For many Maori any mixing of these two types of water is spiritually offensive. The ultimate decision by the Planning Tribunal to proceed with the project naturally provoked a negative response from the Maori community. Given the present system, whereby Maori people have a reactive role, and the entrenched positions of both parties, the situation would appear unsolvable. Even the Waitangi Tribunal, whose subsequent judgement on the case was supportive of the Maori position, was a reactive response occuring well after the decision to proceed was given by the Planning Tribunal.

Other occasions are likely to occur in the future where a Maori perception of the environment conflicts with a Pakeha one within similar forums, and both claim their positions to be inalienable or irreversible. The failure to cope adequately with the conflict between two such groups is perhaps the most disturbing feature of this policy option, and invites investigation of other alternatives which might lead to more acceptable resolutions.

5.2 OPTION TWO: CHANGES OUTSIDE EXISTING PROCEDURES

In light of the limitations noted with the first option the second option seeks to identify some mechanisms outside present decision-making procedures which might bring about a more favourable resolution to conflicts concerning Maori values. While this option is more removed from present procedures, the suggestions nevertheless, attempt to remain practically oriented. The basic premise is that a more favourable resolution will result if Maori authorities are contacted at the earliest possible time. In light of this, the discussion re-examines the New Zealand Steel example, and then investigates two instances where earlier negotiations took place and resulted in more satisfactory outcomes. Comment is then made on some initiatives in environmental mediation in North America and their relevance to the bicultural situation in New Zealand.

First, in reference to the earlier example of the Steel Smelter, implementation of this option would mean that New Zealand Steel would be required to contact the representative Maori body before seeking a grant for a water right for use of the Waikato River and Manukau Harbour. In this particular case, the concerns of the Maori were not fully understood until both were not in a position to compromise. An earlier investigation of the alternatives available to New Zealand Steel, however, shows that a favoured option was a rail link between the source of the ironsand to the south and the Smelter. This was stymied because of opposition by farmers. Although negotiations with other parties would be necessary, the essential point is that earlier contact with Maori groups would have alerted New Zealand Steel to Maori sensibilities and encouraged them to investigate other alternatives; whereas at the culmination of the planning process neither side was in a position to negotiate other options.

5.2.1 Taharoa and Ohaaki

Two examples of where earlier contact has led to more acceptable solutions by both parties are also to be found in the Tainui region. The first is at Taharoa, an isolated Maori community on the West Coast south of Raglan, which is located on large deposits of ironsand. New Zealand Steel negotiated an agreement with the Maori people to mine the sand from the area subject to a number of conditions. These were that should any human remains be found they were to be left until a tohunga was contacted and was able to remove them after following the correct procedures. Two areas were not to be touched under any circumstances. On these sites major battles had taken place, and a large number of people killed, and consequently the areas were regarded as particularly sacred waahi tapu (Nottingham 1986). In addition, the residents of Taharoa secured economic benefits from the development.

The second example involved the Te Ohaaki Geothermal Power Project. The project site comprised some 500 hectares of Ngati Tahu land, the Ministry of Works wished to purchase for geothermal development. Meetings were arranged on the Te Ohaaki marae with the Maori owners to establish their standing in relation to the confusion of legislative procedures and also to gather their own information about the tribe, the location of waahi tapu, and other places of cultural

significance. This gave the Ngati Tahu people an opportunity "to sort out their own ideas and attitudes in discussion in the meeting house, to work out their policy, their kaupapa concerning their land" (Stokes 1980: 12). Their principal fear was that the land would be acquistioned under the Public Works Act. In addition, the people were aided by a number of Maori groups and liased with a Taupo County planner. The hearing itself, when conducted, was preceded by a formal mihi or greeting by a kaumatua of Te Ohaaki which meant that speakers felt more "relaxed about the ordeal of expressing their concerns in what was otherwise a very Pakeha judicial hearing" (ibid). The conclusion of the affair ended in a leasehold agreement with the Crown. Once again provision was made for protection of some important cultural features, and the settlement included economic benefits for the community which was at that time facing outward migration through a lack of opportunity in the area.

These cases illustrate that satisfactory solutions are able to be achieved if early notification of development proposals is given. Two issues arise from the examples. The first is that a Maori community is more able to participate if sufficient time is allowed for the mobilisation of resources. As Stokes notes:

> It takes many years for all the scientific, technical, and engineering design work to be done to plan a big power station. Just as much time needs to be allowed to do the social planning, the discussion and negotiation with local people so that issues can be talked over as they occur. (1980: 13)

Second, in both cases the land was in Maori ownership, placing them in a stronger position to enter discussions. If the land instead had been owned by the Crown or private landholders, the Maori community would have had considerably less opportunity to voice their concerns-indeed, it would have been unlikely that their values would have been given anywhere near the same consideration. Given that most developments are likely to occur on land not under Maori ownership, there is a distinct need for recognition of the nature of Maori attitudes to the landscape regardless of ownership - and raises again the issue of 'ancestral land'. This option, therefore, rests on the proposition that ancestral land is not simply confined to that under Maori ownership.

5.2.2 Mediation

The thesis presented here, therefore, is that conflicts that arise in resource allocation decisions, particularly when different environmental perception are involved, have a greater chance of resolution if negotiation occurs at a much earlier stage. Based on this proposition, there a need to investigate ways to bring groups together before they meet in a confrontational situation as in the courts. Application of non-confrontational approaches have gained significant popularity in North America in the past decade. Mediation programmes, as they are known, are designed primarily to find effective and satisfying means of resolving disputes outside of courts. This process of mediation, while common in other areas, such as labour relations for example, is now being applied in North America to environmental and resource allocation conflict.

Proponents of this process maintain that mediation has a number of advantages over the usual adversarial approach, because it addresses many of the procedural weaknesses of conventional dispute resolution mechanisms. Susskind notes:

> "The judical process is perhaps the most visible means of dispute resolution. It is not only a means of decision-making, but it is also a device for contesting resource allocation decisions made by legislative and administrative bodies. The adversarial character of legal proceedings, however, discourages joint problem solving and short circuits the search for mutual gain. Typically, the issue is whether a given administrative decision is legal, not whether it is wise. Judicial dispute resolution leaves the disputants with a better working relationship than they had before the conflict erupted.
>
> (Susskind 1983: 266)

Mediation, allows for more direct involvement of those most affected by decisions than do most administrative and legislative processes; it produces results more rapidly and at a lower cost than do courts; and it is flexible and therefore more adaptable to the specific needs of the parties in a given situation (Susskind 1985). Mediated solutions, therefore, rather than being imposed from above, as are arbitrated or adjudicated decisions, are reached through the mutual consent of both parties to a dispute. For this reason, the extensive literature on mediation may provide a framework in which to investigate situations where a proposal from a developer conflicts with the values held by Maori.

The process of mediation commonly includes a non-partisan mediator. trusted by both parties. Representatives from the different parties meet, generally on a voluntary basis, with an arranged agenda. The mediator assists with negotiations, ensures a common understanding of technical points among participants, and may suggest courses of action to help resolve disputes. While the inclusion of a mediator is not an essential feature, it may produce a settlement more rapidly.

The aim of obtaining a consensus position between parties through mediation processes, can be parallelled with the traditional functioning of the marae. Here the procedure is divided into two main parts. The first follows more formal protocol of calling the manuhiri (visitors) on to the marae. Once there, speeches are given by both the tangata whenua (hosts) and the manuhiri. Following this a koha (gift) from the manuhiri is presented to the tangata whenua. The formal greetings are concluded with a hongi - the pressing of the fronts of noses once or twice between manuhiri and tangata whenua. This symbolises the mixing of breath, and the manuhiri then becomes one with the tangata whenua and are able to move freely about the marae. The significant feature of the ceremony is that the two groups are brought slowly together, from a position of distinct separateness to one where there is close physical contact. The meeting then enters the second and less formal part, although there are particular practices and customs which are still followed.

The marae, therefore, offers an excellent forum for mediation. Here traditionally, tribal decisions have been reached on the basis of consensus. Agreements are reached in non-adversarial way - mediation procedures being already in existence within Maori custom. Moreover, for anyone who has had the opportunity of staying on a marae, the prospect of living alongside an adversary breaks down many of the barriers of formality which could otherwise impede negotiation, and is more likely to foster an atmosphere of conciliation. The marae itself encourages freedom of expression and generally there is no formal order of speaking. Although discussions of this nature do not typically involve the use of a mediator, the inclusion of a neutral party could aid negotiation in the ways discussed above.

In particular, Susskind (1985) has noted that procedural concerns have been raised by a number of analysts. These are: problems of representation, difficulties of setting an appropriate agenda, obstacles to joint fact-finding, difficulties binding parties to their commitments, and obstacles monitoring and enforcing negotiated agreements. While a mediator might not necessarily play a central role in discussions within the marae, they could provide a valuable function as an intermediary resolving the above problems, and in addition, organising venues, providing appropriate information and formalising agreements made within the marae forum. Furthermore, a mediator whose neutrality is trusted by both sides, could aid a private developer who lacks the services of a Maori secretariat or representation, as with the Ministry for the Environment or other government departments, to make initial contacts with a Maori community. The mediator would play an important monitoring role to ensure that agreements are kept and impacts are kept within the agreed limits.

This framework for resolving disputes is based on participation at an early stage in a resource development proposal and utilises processes of mediation, the essence of which is encapsulated in traditional marae procedures. It makes no claim to be a comprehensive solution to the incorporation of Maori values, but points to avenues from which a more flexible outcome might arise. Such an alternative, being a departure, from current procedures, would, however, involve a number of implications. These are discussed briefly below.

5.2.3 Implications of Adopting Option Two

To be effective this option may entail a compulsory requirement to bring both parties together at an early stage. This would apply not only to private developers but also local and government bodies who contemplated a development project or some other form of environmental change. Moreover, Pakeha developers and resource managers will be required to function within a marae forum and be familiar with cultural procedures. While this could be construed as an educative process, it may also be resisted by Pakehas who feel threatened by the prospect of operating within an alien environment. Its implementation, therefore, may encounter opposition by those who maintain present procedures are culturally adequate.

An option of this nature can operate only if the definition of 'ancestral' land is broadened sufficiently to allow it to apply to areas not under Maori ownership. Unless this occurs there will be little difference between this option and the status quo situation. The only Maori communities which will benefit will be those like Taharoa and Te Ohaaki who own their land. Furthermore, the option presupposes the existence of a cohesive Maori community who is able to facilitate negotiations and voice their own concerns. Resources may need to be made available to enable this to occur. However, such negotiations in a marae forum are unlikely to lead to what has occurred in other decision-making forums where a Maori perception has been labelled as irrational, but is more likely to foster respect for the other's position.

Finally it is possible that a negotiated outcome may not occur, in which case the issue may resort back to judicial processes. Such an option, therefore, while not completely replacing more conventional legislative procedures would act in partnership. A later judicial hearing, however, should be made aware of earlier mediation proceedings and the reasons for their abandonment. Therefore, considering the inordinate time and cost associated with present Planning Tribunal hearings, an input which produced an agreement or simplified issues would constitute a saving both in time and money for all parties and would justify its expense. In this way, the two options above, rather than being distinct in function would be complementary. Their implementation, together with the present inquistorial nature of the Waitangi Tribunal, might result in decision-making procedures which reflected the needs of New Zealand, rather than being a mono-cultural import.

CHAPTER 6

CONCLUSION

This study has systematically addressed the questions raised in the problem statement. It has shown that historically Maori values have been accorded little relevance. Recently, however, with Maori protestations resulting from resource developments and other uses of the environment, attention has been focussed on these values. Chapter two illustrated the nature of Maori values and established that they are still strongly held. Chapter three then investigated the position of the Maori as a minority group in New Zealand and concluded that as original inhabitants, whose status has been recognised under the Treaty of Waitangi, their values should be accorded specific consideration. Following the case established in these chapters, the fourth chapter addressed the final question raised in the problem statement. It revealed that aspects of current decision-making procedures inhibited the consideration of Maori values. In light of this, the study formulated two options to improve the present situation.

Throughout the course of the discussion a number of reccurant issues have arisen. Elaboration of these is beyond the scope of this study, however, three points in particular merit further mention. The first concerns the problem of ancestral land. The Maori have cultural and spiritual links with land regardless of ownership. This can conflict with a dominant European attitude where land is viewed primarily as a commodity. The problem is a manifestation of land individualisation which occurred during colonial occupation. Under the existing legal framework, the communication of Maori concerns and values is restricted because land is not in their possession. Bridging the gap between a Maori perception and one which bestows most rights on the property holder requires attention. Given the implications which may flow from a wider interpretation of ancestral land, it is hardly surprising that the Planning Tribunal has adopted a conservative approach. The issue is one which more rightfully requires address in political or constitutional decision-making forums.

The second issue concerns the recognition of the appropriate Maori authority to participate in environmental decision-making. It has been suggested here that a more appropriate Maori authority would be one that reflected the tribal nature of Maori society. Bodies, such as the tribal trust boards, have already established kinship networks and possess knowledge of the tribal relationship with the local environment. They have the potential, therefore, to play an important role in the communication of Maori values. To be effective, however, these groups require a cohesive organisational structure and adequate resources to develop the ability and expertise to participate in decision-making procedures. Public authorities need also to acknowledge the tribal nature of such an authority - an aspect historically ignored.

Finally, the conflicts mentioned earlier have highlighted the existence of some values which have appeared irrational or nonsensical to Pakehas. For example, the belief in taniwhas or spiritual pollution which remains after tertiary treatment of effluent. If a belief were held by one or two isolated individuals they might well be justifably disregarded by the majority. However, the values expressed in such examples are held by a recognisable cultural group whose perceptions are consistent with their traditional view of the world. Therefore, while they may appear irrational to many, they cannot be simply dismissed as irrelevant. This does not preclude, however, the use of reason in decision-making. What it does require is that each party recognise the position of another. Attention can then be directed at the relevant facts or areas of central importance. Whether, for example, a Maori value is a central or absolute one or whether by following certain procedures or redressing costs by some other means greater flexibility might be encouraged. Similarly for a developer, this may involve consideration alternatives which could remove or lessen an impact of a resource development. The adoption of procedures outside the conventional framework as in option two, will stimulate greater tendency towards mutual respect.

This final issue concerning attitudes to Maori or other cultural values, is ultimately most important. Traditionally, resource and environmental management have paid little attention to cultural diversity of perception. However, it is clear from this study that democratic decision-making in a society based on majority rule can only operate effectively for the good of all if the decision-makers recognise that groups are different and that their values need to be actively taken into account. Without a change of Pakeha attitude, irrespective of the introduction of reforms, decision-making is likely to continue as it has done historically, reflecting a policy of integration and assimilation.

Following the historic signing of the Treaty of Waitangi, Governor Hobson proclaimed "we are one people". Hobson's counterpart in 1985, Sir David Beatty, reassessed the statement at the 145th anniversary of the signing when he stated "we are two people, one nation". This reassessment involves re-examining the attitudes and procedures which currently determine the functioning of New Zealand society. It is within this context that this study has endeavoured to make a contribution.

FOOTNOTES

1. By values it is meant:

   "ideals, customs, institutions etc., of a society toward which the people of the group have an affective regard." (Random House Dictionary 1983)

   The term "Maori values" refers particularly to those values the Maori hold which govern the way they perceive and use the natural environment. It should also be noted that these values can vary significantly between different tribal groups.

2. Amongst those are the Coal Mines Act 1979, the Petroleum Act 1937, the Harbours Act 1967, the Town and Country Planning Act 1977, the Marine Farming Act 1971, the Marine Resources Act 1971, the Contineual Shelf Act 1964, the Iron and Steel Industry Act 1959, the National Development Act 1979. (Kenderdine 1985:24)

3. The seven sections of national importance are: "3. Matters of national importance: (1) In the preparation, implementation and administration of regional, district, and maritime schemes, and in administering the provisions of Part II of this Act; the following matters which are declared to be of national importance shall in particular be recognised and provided for:

   (a) The conservation, protection, and enhancement of the physical, cultural and social environment:

   (b) The wise use and management of New Zealand's resources:

   (c) The preservation of the natural character of the coastal environment and the margins of lakes and rivers and the protection of them from unnecessary subdivision and development:

   (d) The avoidance of encroachment of urban development on, and the protection of, land having a high actual or potential value for the production of food:

   (e) The prevention of sporadic subdivision and urban development in rural areas:

   (f) The avoidance of unnecessary expansion of urban areas into rural areas in or adjoining cities:

(g) The relationship of the Maori people and their culture and traditions with their ancestral land."

4. Essential works defined in s2 Public Works Act 1981 cover the following purposes: drainage, sewerage, rubbish disposal, irrigation, river control, soil conservation, water supply; the production or distribution of energy; any hospital or health centre; a university, school, or technical institution; a road, motorway, railway or aerodrome; air and sea navigational aid; post office, telecommunication installations; defence works; reserves and wildlife habitats for the protection of rare, endangered or threatened species of flora or fauna.

   The list maybe extended s3 by declaration of the Governor General by order in Council to cover any specific public work.

5. The following discussion is based on the paper by Palmer 1982.

6. See Shearer D. 1986 Rotowaro Mines Extension Technical Report. Maori Cultural and Spiritual Values. Environmental Impact Report for Rotowaro Coalfield Development, M.S.R.C University of Waikato.

REFERENCES

Anderson R.,1983. Planning for Maori Needs. Ministry Works and Development.

Asher G Te W., 1980. Planning a Matter of Values: A Maori Cultural Dimension in Planning. Research Essay for Bachelor of Town Planning. University Auckland unpublished.

Attfield R., 1983. The Ethics of Environmental Concern. Basil Blackwell, Oxford.

Auckland District Maori Council., 1980. Special Relationships with Auckland Regional Authority. Submission to ARA.

Barnhardt R., 1985. Maori Makes a Difference. Human Resources for Maori Development. Occ. Paper no. 29 CMSR. University of Waikato.

Best E., 1904. Notes on the Custom of Rahui: its application and manipulation and also its supposed powers, its rites, invocations and superstitions. Journal Polynesian Society Vol XIII: 83.

Black J., 1970. Man's Dominion. Edingburgh University Press, Edinburgh.

Boulding K. E., 1975. Truth or Power? Science 190: 4213.

Bromley D.W. et al., 1977. Institutional Design for Improved Environmental Quality: Legal and Economic Aspects in Wisconsin. Madison University of Wisconsin.

Centre for Maori Studies and Research 1984. The Development of Coal-fired Power Stations in the Waikato: a Maori Perspective. Occasional Paper No. 24. University of Waikato.

Ciriacy-Wantrup S.V. Water Policy and Economic Optimising: Some Conceptual Problems in Water Research. American Economic Review. May pp 178-195. 1967.

Douglas E.M.K., 1984. Waiora, Waimaori, Waikino, Waimate, Waitai: Maori Perceptions of Water and the Environment. Occ. paper No. 27 Centre for Maori Studies and Research, University Waikato.

Dyke N. (ed), 1985. Indigenous Peoples and the Nation State: Fourth World Politics in Canada, Australia and Norway. Inst. Social and Econ. Papers No. 14 Memorial University. Newfoundland.

Frame A., 1981. Colonising Attitudes towards Maori Custom. New Zealand Law Journal. March 1981 pp 105-110.

Firth R., 1972. Economics of the New Zealand Maori. Government Printer. Wellington.

Foden N.A., 1938. Constitutional Development of New Zealand in the First Decade1839-1849. Watkins Ltd., Wellington.

Haughey E.J., 1976. The Maori Land Court. New Zealand Law Journal. p 203-210.

Human Rights Commission, 1981. Race Against Time. Wellington.

Isaac P., 1980. Preserving Maori Lands. People and Planning 15 pp 5-7.

Kelsey J., 1984. Legal Imperialism and the Colonisation of Aotearoa in P. Spoonley et al. (eds). Tauiwi, Racism and Ethnicity in New Zealand. Dunmore Palmerston North p 20-43.

Kenderdine S., 1985a. Statutory Separatness (1): Maori issues in the planning process and the social responsibility of industry. New Zealand Law Journal. Aug 1985 pp 249-259.

- 1985b. Statutory Separatness (2): The Treaty of Waitangi Act 1975 and the planning process. New Zealand Law Journal. September 1985 p300-306.

Leach B.F. and H.M. (eds), 1979. Prehistoric Man in Palliser Bay. National Museum of New Zealand. Bulletin: 21.

Ludbrook R., 1975. The Law and the Polynesian. NZLJ Aug. 5 pp 420-33.

McHugh P.G., 1984. Aboriginal Title in New Zealand Courts. Canterbury Law Review 2:2 pp 235-236.

Mahuta R and Egan K., 1981. Waahi: A case study of social and Economic Development in a New Zealand Maori Community. Occ Paper no. 12 CMSR University of Waikato.

Mahuta R et.al.(ed), 1985. He Whakatakotoranga kaupapa Te Waahanga Tuarua. Submissions to Treaty of Waitangi Tribunal Makaurau Marae. CMSR University of Waikato.

Matunga H.P., 1983. Planning in Aotearoa: A Dual Heritage. Research Essay. University Auckland.

Kingi P., 1983. Maori Planning Kit. Auckland Maori Planning Committee.

Mead H. Extracts from Concepts of the Maori. Maori Studies Casebook. Victoria University, Wellington.

Ministerial Advisory Committee on a Maori Perspective for Department Social Welfare., 1986. Puao-te-ata-tu (Daybreak) Government Printer Wellington.

Ministry of Energy., 1986. Review of Mining Legislation. Summary of Public submissions. Kerslake, Derry and Co., Wellington.

Molloy A., 1971. The Non-Treaty of Waitangi. New Zealand Law Journal: 47 pp 193-7.

Morgan R.K., 1983. The Evolution of Environmental Impact Assessment in New Zealand. Journal of Environment. Man.: 16 pp 139-152.

Neeson M.P., 1983. Institutions for Water Resources Management in North Canterbury: A Case Study. Research Project Centre for Resource Management. University of Canterbury.

Nottingham I., 1986. Social Impact Reporting in a Bi-Cultural State. Discussion paper.

Orbell M., 1985. The Natural World of the Maori. Collins, Auckland.
O'Regan 1984 in Douglas above.
Passmore J., 1974. Man's Responsibility for the Environment. Duckworth, London.

Palmer K.A., 1982. Acquisition of Maori Land for Public Works. Town Planning Quarterly 65 pp 35-44.

Pawson E., 1986. Order and Freedom: A Cultural Geography of New Zealand. Unpublished paper Department of Geog.University of Canterbury.

Pepper D., 1984. The Roots of Modern Environmentalism. Croom/Helm Ltd. Kent.

Rikys P., 1980. The Case for Maori Representation in Regional Planning. Te Maori April/May pp 26-28.

Shearer D. et al, 1986. Rotowaro Mines Extension Technical Report. Maori Cultural and Spiritual Values. EIR Rotowaro Coalfield Development. CMSR University of Waikato.

Stokes E., 1979. Population Change and Rural Development. Workshop, Hawarden: The Maori Situation.

- 1980. Power Stations on Maori Land. People and Planning 15 pp 10-13.

Susskind L. and Ozawa C., 1983. Mediated Negotiation in the Public Sector. Am. Behav. Sci. Vol 27:2 pp 255-279.

Susskind L. and Ozawa C., 1985. Mediating Public Disputes: Obstacles and Possibilities. Journal of Social Issues 41: 2, pp 145-159.

Turner A.R., 1985. The Changing Basis of Decision-making: is reason sufficient? New Zealand Engineering April pp 13-23.

Waitangi Tribunal., 1983. Findings and Recommendations on an application by Aila Taylor for and on behalf of Te Atiawa Tribe.

- 1984. Findings in a claim by Sir Charles Bennett and others in respect of a proposed nutrient pipeline to the Kaituna River.

- 1985. Findings of a claim by Ngaueko Minhinnick and Te puaha ki Manuka concerning Manukau Harbour and environments.

- 1986. Findings relating to Te Reo Maori and a claim lodged by Huirangi Waikerepuru and Nga Kaiwhakapumau i te Reo.

Walker R., 1981. A cultural Perspective on Maori Land-Use in R. Walker ed Nga Tumanako. Maori Land-Use National Conference. University Auckland Press, Auckland.

Ward A., 1973. A Show of Justice: Racial "Amalgamation" in nineteenth century New Zealand. Auckland University Press, Auckland.

White L., 1967. Historical Roots of our Ecological Crisis. Science 155: 37 pp 1203-1207.

Worsley P., 1984. The Three Worlds. Weidenfeld and Nicolson. London.

GLOSSARY

hapu	sub-tribe
hongi	the nose pressing greeting
hui	gathering of people
iwi	tribes
karanga	call of welcome on to a marae
kaumatua	an elder
kaupapa	procedures
kawa	protocol
koha	gift
kuia	women elder
marae	a gathering place; the physical dimension of a group's identity, beliefs, mana etc.
marae atea	forecourt or open space in front of the meeting house.
mana	divine power for leaderhip, prestige
manuhiri	visitors
mauri	ethos, life force, life essence
mihi	greeting
papakainga	original area of settlement
powhiri	welcome
rahui	a mark to warn people against trespassing, used in case of tapu or for temporary protection of fruit, birds, fish etc.
tangata whenua	hosts, people belonging to a particular place
tapu	sacred forbidden
tohunga	priest.
whakapapa	lineage
whanau	family
whenua	land
urupa	burial place

APPENDIX ONE

TREATY OF WAITANGI

SCHEDULES

FIRST SCHEDULE
THE TREATY OF WAITANGI
(THE TEXT IN ENGLISH)

HER MAJESTY VICTORIA Queen of the United Kingdom of Great Britain and Ireland regarding with Her Royal Favour the Native Chiefs and Tribes of New Zealand and anxious to protect their just Rights and Property and to secure to them the enjoyment of Peace and Good Order has deemed it necessary in consequence of the great number of Her Majesty's Subjects who have already settled in New Zealand and the rapid extension of Emigration both from Europe and Australia which is still in progress to constitute and appoint a functionary properly authorised to treat with the Aborigines of New Zealand for the recognition of Her Majesty's Sovereign authority over the whole or any part of those islands—Her Majesty therefore being desirous to establish a settled form of Civil Government with a view to avert the evil consequences which must result from the absence of the necessary Laws and Institutions alike to the native population and to Her subjects has been graciously pleased to empower and to authorise me William Hobson a Captain in Her Majesty's Royal Navy Consul and Lieutenant Governor of such parts of New Zealand as may be or hereafter shall be ceded to her Majesty to invite the confederated and independent Chiefs of New Zealand to concur in the following Articles and Conditions.

ARTICLE THE FIRST

The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess, or may be supposed to exercise or to possess over their respective Territories as the sole Sovereigns thereof.

ARTICLE THE SECOND

Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Preemption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.

ARTICLE THE THIRD

In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects.

W. HOBSON Lieutenant Governor.

Now therefore We the Chiefs of the Confederation of the United Tribes of New Zealand being assembled in Congress at Victoria in Waitangi and We the Separate and Independent Chiefs of New Zealand claiming authority over the Tribes and Territories which are specified after our respective names, having been made fully to understand the Provisions of the foregoing Treaty, accept and enter into the same in the full spirit and meaning thereof: in witness of which we have attached our signatures or marks at the places and the dates respectively specified.

Done at Waitangi this Sixth day of February in the year of Our Lord One thousand eight hundred and forty.

[*Here follow signatures, dates, etc.*]

(THE TEXT IN MAORI)

Ko Wikitoria te Kuini o Ingarani i tana mahara atawai ki nga Rangatira me nga Hapu o Nu Tirani i tana hiahia hoki kia tohungia ki a ratou o ratou rangatiratanga me to ratou wenua, a kia mau tonu hoki te Rongo ki a ratou me te Atanoho hoki kua wakaaro ia he mea tika kea tukua mai tetahi Rangatira—hei kai wakarite ki nga Tangata maori o Nu Tirani—kia wakaaetia e nga Rangatira maori te kawanatanga o te Kuini ki nga wahikatoa o te wenua nei me nga motu—na te mea hoki he tokomaha ke nga tangata o tona Iwi Kua noho ki tenei wenua, a e haere mai nei.

Na ko te Kuini e hiahia ana kia wakaritea te Kawanatanga kia kau ai nga kino e puta mai ki te tangata Maori ki te Pakeha a noho ture kore ana.

Na, kua pai te Kuini kia tukua a hau a Wiremu Hopihona he Kapitana i te Roiara Nawi hei Kawana mo nga wahi katoa o Nu Tirani a tukua aianei amua atu ke te Kuini e mea atu ana ia ki nga Rangatira o te wakaminenga o nga hapu o Nu Tirani me Rangatira atu enei ture ka korerotia nei.

KO TE TUATAHI

Ko, nga Rangatira o te wakaminenga me nga Rangatira katoa hoki ki hai i uru ki taua wakaminenga ka tuku rawa atu ki te Kuini o Ingarani ake tonu atu—te Kawanatanga katoa o o ratou wenua.

KO TE TUARUA

Ko te Kuini o Ingarani ka wakarita ka wakaae ki nga tangata katoa o Nu Tirani te tino rangatiratanga o o ratou kainga me o ratou taonga katoa. Otiia ko nga Rangatira o te wakaminenga me nga Rangatira katoa atu ka tuku ki te Kuini te hokonga o era wahi wenua e pai ai te tangata mona te Wenua—ki te ritenga o te utu e wakaritea ai e ratou ko te kai hoko e meatia nei e te Kuini hei kai hoko mona.

KO TE TUATORU

Hei wakaritenga mai hoki tenei mo te wakaaetanga ki te Kawanatanga o te Kuini—Ki tiakina e te Kuini o Ingarani nga tangata maori katoa o Nu Tirani ka tukua ki a ratou nga tikanga katoa rite tahi ki ana mea ki, nga tangata o Ingarani.

(Signed) W. Hobson,
Consul & Lieutenant Governor.

Na ko matou ko nga Rangatira o te Wakaminenga o nga hapu o Nu Tirani ka huihui nei ki Waitangi ko matou hoki ko nga Rangatira o Nu Tirani ka kite nei i te ritenga enei kopu, ka tangohia ka wakaaetia katoatia e matou, koia ka tonungia ai o matoa ingoa o matou tohu.

Ka meatia tenei ki Waitangi i te ono o nga ra o Pepueri i te tau kotahi mano, e waru rau e wa te kau o to tatou Ariki.

MAORI PERCEPTIONS OF WATER

A, WAIMAORI, WAIKINO, WAIMATE, WAITAI

HE TĪMATANGA

WAIORA

Waiora is the purest form of water, it is the spiritual and physical expression of Ranginui the sky father in his longed-for embrace with Papatuānuku, the earth. Pure water is termed Te Waiora ā Tāne, and to the Māori, it contains the source of life and well-being. Waiora is used in sacred rituals to purify and to sanctify. The rain is waiora; contact with Papatuānuku gives it its purity as water for human consumption. Water can remain pure, as waiora, only if its contact with humans is protected by appropriate ritual prayers. Waiora has the potential to give life, to sustain well-being, and to counteract evil. At particular wāhi tapu (sacred sites) the sacredness of the prayers and the purity of the water reinforce each other, but if one is damaged, then so too will the other. At Waitaiki, Arahura, the mauri of the river, the mauri of pounamu, (greenstone), and the mauri of Kai Tahu the takata whenua, are inextricably linked.

WAIMĀORI

Water becomes waimāori when it comes into unprotected contact with humans. It becomes waimāori in contrast to waiora, because it is normal, usual or ordinary and no longer has any particularly sacred associations. Waimāori is the term used to describe water that is running freely or unrestrained, or to describe water which is clear or lucid. Waimāori has a mauri (which is generally benevolent) and which can be controlled by ritual.

WAIKINO

As with other statuses of water, waikino has both spiritual and temporal meanings. In the temporal sense, waikino is the term used to describe water which is rushing rapidly through a gorge, or water where there are large boulders or submerged snags which give the water the potential to cause harm to humans. In the spiritual sense, waikino is water which has been polluted or debased, spoilt or corrupted. In waikino, the mauri has been altered so that the supernatural forces are non-selective and can cause harm to anyone. Despite protests and warnings of potential danger sewage ponds were constructed at Whaingaroa (Raglan) on the site of one of the lairs of the guardian taniwha Te Atai ō Rongo. That site has been debased, and as a consequence, the people there believe that the guardian mauri of Te Atai o Rongo has the potential to cause ill-fortune, or calamity, so too does the waikino of that place.

WAIMATE

Waimate is water which has lost its mauri, or life force. It is dead, damaged or polluted water which has lost its power to rejuvenate either itself or other living things. Waimate, like waikino, has the potential to cause ill-fortune, contamination or distress to the mauri of other living or spiritual things, including people, their kaimoana or their agriculture. The subtle differences between waikino and waimate seem to be based on the continued existence of a mauri (albeit damaged) in the former, and its total loss in the latter. The waters of the Manukau have been described as waimate, because of extensive industrial contamination and sewage pollution.

Waimate also has a geographical meaning; to denote sluggish water, a backwater to a main stream or tide, but in this sense the waimate retains its mauri.

WAITAI

Waitai is the name used to describe the sea, the surf, or the tide. Waitai has another meaning, rough, angry or boisterous like the surf, or the surge of the tide. The term waitai is used also to distinguish sea water from fresh water (waimāori). Although Māori people did not fully comprehend the water cycle as taught in the elementary science syllabus, particularly the cycle of evaporation and precipitation, waitai is water which has returned to Tangaroa, in the natural process of generation, degradation and rejuvenation. Such a notion does not seem to be antithical to modern science.

(from Douglas 1984)

APPENDIX THREE

LETTER FROM NGATI RAUKAWA TO WAIPA COUNTY COUNCIL

Bulmer Rd.,
PUKEATUA.
September 26,1986.

The Chairman,
Waipa County Council,
Bank Street,
TE AWAMUTU.

Dear Sir,

In response to your letter of September 15 1986, we the Raukawa Development Trust wish it known that we are still opposed to the Council's construction plan and determination to proceed with business as usual. In our earlier submission we stated that while we were not opposed to development in general we wished the particular site chosen for the erection of the reservoir to be preserved, as it is sacred to the Ngati-Raukawa people.
Despite its claims, we feel that the Council has not seriously considered Maori values or adequately involved the Maori community in the decision making pertaining to the project. This is a double tragedy,for not only will a site of historic significance to the Raukawa people be desecrated,but it will also demonstrate how limited and unenlightened the Council is.

The Trust is not opposed to science and its practitioners, but it views with suspicion a report that upholds only material values and makes no provision for the non-material dimension of phenomena. Granted, the archaeologist has fulfilled the requirements of the law, but he has denied the spirit of the Act at a time when, the Waitangi Tribunal has been insisting that the 'spirituality' of objects, rivers, mountains, terrain and other things held sacred to the Maori people be acknowledged. Indeed, even a cursory view of current legislation reveals that it does recognise metaphysical values. (1984: Centre for Maori Studies and Research, Occasional Paper No. 26; 1985: Occasional Paper No.25).

Beside the legislative attempt to correct past insensitivites, the Ministry of Energy has set up a Consultancy composed of elders whose input into energy related projects has helped prevent the disruption of historically significant sites. And the recent publication of the Education Department's Curriculum review shows, finally, that it too must include and acknowledge the relevance of a Maori perspective. We feel that it would behove the Council to follow the lead that the above agencies have provided.

In validating our claim that the hill which the Council is presently excavating be preserved, we can think of no better introduction than to quote one of King Tawhiao's most famous proverbial expressions:

Ko Arekahanara toku hoana kaha
Ko Kemureti toku oko horoi
Ko Ngaruawahia toku turangawaewae.

Alexandra (Pirongia) will be a symbol of my strength of character
Cambridge a washbowl of my sorrow
Ngaruawahia my footstool.

The hill upon which the Council plans to build the reservoir is incompassed in the geographic parameters expressed above, but what King Tawhiao was referring to was a symbolic landscape in which according to the elders who were consulted, the hill occupied a prominent place both before and during Tawhiao's time. The hill is called Whenuku after Whenukurangi, the son of Tamati Te Rata, chief and ancestor of Te Rauparaha .Upon the birth of his son Tamati Te Rata pronounced the following:

Ka horo katoa tatou i waenganui i te repo. Ko to pare hei rongoa ma te iwi i raro i tenei maunga o Roto-o-rangi.

What Tamati Te Rata meant by this expression was that his son should defend the hill and the area below it to prevent his people from becoming bogged down in the swamp. It follows from what the elders or kaumatua have said, that the hill named Whenuku was a prominent lookout point for the Raukawa occupants of Roto-o-rangi. The approach of groups whether on missions of war or peace could be easily seen from this vantage point. Indeed, according to our oral historians, ancient battles were fought on and in the vicinity of Whenuku.

In the 1930's, Princess Te Puea was responsible for removing the remains of Tamati Te Rata and for interring them at Taupiri.The remains of two other Raukawa chiefs, namely Te Aitu and Haami are still there, and the elders believe that there could be others who fell in past battles. These beliefs together with the name given to the hill and its role in the social life of ancient and more recent occupants are the basis for attributing sanctity to the site and for the Raukawa people regarding it as such. They have had to submit to the indignities of confiscation and the trampling of their mana as a consequence. They have also witnessed the cultivation of the area by strangers, but this has not detracted from their belief and regard of Whenuku as a sacred place occupying, along with many other sites in the wider locality, a symbol of their ancestors, of their occupation and defence of their ancient territory. Such values can not be measured quantitatively or equated materially. There are more things in heaven and earth which even hardcore scientists are beginning to appreciate.

We,the Raukawa Trust Board as representatives of the Raukawa people ask no more than that the Waipa County Council cease their present operations and build on the alternative site selected two years ago.

Yours faithfully,

Secretary
Raukawa Development Trust.